136

In the Privy Council.

IN THE MATTER OF ARBITRATION AND AWARD UNDER THE 142ND SECTION OF THE BRITISH NORTH AMERICA ACT, 1867.

BETWEEN

THE PROVINCE OF ONTARIO, IN THE DOMINION OF CANADA,

AND

THE PROVINCE OF QUEBEC, IN THE DOMINION OF CANADA.

SPECIAL CASE.

Stated for the opinion of the Judicial Committee of the Privy Council.

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SPECIAL CASE.

Stated for the opinion of the Judicial Committee of the Privy Council:

Under the British North America Act of 1867, the Provinces of Canada, Nova Scotia, and New Brunswick were united into one Dominion under the name of Canada; the parts of the Province of Canada, as it existed at the time of the passing of the Act, which formerly constituted respectively the Provinces of Upper and Lower Canada, were severed and formed into two separate Provinces, the part which formerly constituted the Province of Upper Canada becoming the Province of Ontario, and the part which formerly constituted the Province of Lower Canada becoming the Province of Quebec; and it was by the said Act provided, amongst other things, that all Stocks, Cash, Banker's Balances and Securities for money belonging to each Province at the time of the Union, except as in the said Act mentioned, should be the property of Canada, and should be taken in reduction of the amount of the respective debts of the Provinces at the Union; that certain public works and property of each Province enumerated in the third Schedule to the said Act, should be the property of Canada; that all lands, mines, minerals and royalties belonging to the several Provinces of Canada, Nova Scotia and New Brunswick at the Union, and all sums then due or payable for such lands, mines, minerals or royalties, should belong to the several Provinces of Ontario, Quebec, Nova Scotia and New Brunswick, in which the same is situate and arise, subject to any trusts existing in respect thereof, and to any interest other than that of the Province in the same; that all assets connected with such portions of the Public Debt of each Province as were assumed by that

B.N.A. Act, 1867.

Sec. 107.

Sec. 108.

Sec. 109.

Sec. 110.

B. N. Act, 1867. Province should belong to that Province; that Canada should be liable for the debts
Sec. 111. and liabilities of each Province existing at the Union; that Ontario and Quebec
Sec. 112. conjointly should be liable to Canada for the amount (if any) by which the debt of the Province of Canada exceeded at the Union $62,500,000, and should be charged with interest at the rate of five per centum per annum thereon;
Sec. 113. that certain assets enumerated in the fourth Schedule to the said Act, belonging at the Union to the Province of Canada, should be the property of
Sec. 117. Ontario and Quebec conjointly; that the several Provinces should retain all their respective public property, not otherwise disposed of in the said Act, subject to the right of Canada to assume any lands or public property required for for-
Sec. 118. tifications or for the defence of the country; that the following sums should be paid yearly by Canada to the Provinces of Ontario and Quebec for the support of their Governments and Legislatures, Ontario eighty thousand dollars, Quebec seventy thousand dollars, and an annual grant in aid of each Province should be made, equal to eighty cents per head of the population as ascertained by the
Sec. 142. census of one thousand eight hundred and sixty-one; that the division and adjustment of the debts, liabilities, properties and assets of Upper Canada and Lower Canada should be referred to the arbitrament of three Arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada; that the selection of the Arbitrators should not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec had met; and that the Arbitrator chosen by the Government of Canada should not be a resident either in Ontario or in Quebec.

In pursuance of the said Act, after the Parliament of Canada, and the Legislatures of Ontario and Quebec respectively had met, the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada were duly referred to the Arbitrament of three Arbitrators, namely: The Honourable David Lewis Macpherson, who was chosen by the Government of Ontario on the thirteenth January, 1868; the Honourable Charles Dewey Day, who was chosen by the Government of Quebec on the thirtieth January, 1868, and the Honourable John Hamilton Gray, who was chosen by the Government of Canada on the twenty-third May, 1868; the said John Hamilton Gray not being a resident either in Ontario or in Quebec.

The said Arbitrators having taken upon themselves the burden of the said arbitration, held their first meeting in the Committee Room, No. 8, of the Parliament Buildings, House of Commons side, in the City of Ottawa, at noon on the 31st day of August, 1869. Present: The Honourable JOHN HAMILTON GRAY, the Honourable DAVID LEWIS MACPHERSON, and the Honourable CHARLES DEWEY DAY.

The Honourable Edmund Burke Wood, the Treasurer of the Province of Ontario, appeared on behalf of the Province of Ontario, and the Honourable Christopher Dunkin, the Treasurer of the Province of Quebec, appeared on behalf of the Province of Quebec, along with Mr. Ritchie, of Montreal, and Mr. Casault, of Quebec, as his Counsel.

The Arbitrators ordered that the Commissions appointing the said Arbitrators should be produced and read, and entered on the minutes; and they were produced and read accordingly, and are in the words following:

(COMMISSIONS.)

CANADA.

SEAL. MONCK.

Patent appointing the Hon. J. H. Gray, arbitrator, under 142 sec., B.N.A. Act, 1867.

VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c.

To the Honourable John Hamilton Gray, of the City of St. John, in the Province of New Brunswick, in our Dominion of Canada, Esquire, and to all to whom these presents shall come, Greeting:

Whereas in and by the one hundred and forty-second Section of "the British North America Act, 1867," it is enacted that the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada should be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada; and that the selection of the arbitrators should not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec had met; and that the arbitrator chosen by the Government of Canada should not be a resident either in Ontario or Quebec. And whereas the Parliament of Canada and the Legislatures of Ontario and Quebec have met.

And whereas one arbitrator (to wit: The Honourable David Lewis Macpherson) has been chosen by the Government of Ontario, and one arbitrator (to wit: The Honourable Charles Dewey Day) has been chosen by the Government of Quebec.

And whereas it is expedient that in pursuance of the said hereinbefore recited Act, one arbitrator should be chosen by the Government of Canada, for the purposes in the hereinbefore recited section of the said Act mentioned, and we have thought fit to appoint you the said John Hamilton Gray, not being a resident either in Ontario or Quebec, to be such arbitrator.

Now know ye, that reposing especial trust in the loyalty, ability, and integrity of you, the said John Hamilton Gray, We of our especial grace and our good will and pleasure, and by and with the advice of our Privy Council for Canada, do by these presents nominate, constitute and appoint you, the said John Hamilton Gray, to be the one Arbitrator chosen by the Government of Canada in pursuance of and under the authority of the said one hundred and forty-second Section of "The British North America Act, 1867," and for and on behalf of the Government of Canada, to arbitrate together with the Arbitrators chosen by the Governments of Ontario and Quebec respectively, in all and every the matters referred in and by "The British North America Act, 1867," to such arbitrators. And We hereby confer upon you full power and authority as such Arbitrator, as aforesaid, to act together with the other Arbitrators in the said recited section referred to, in and about the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada, and concerning every matter and thing relating

J. A. MACDONALD,
Attorney-General, Canada.

thereto; and to award thereon by virtue of "The British North America Act, 1867," and according to the true intent and meaning thereof.

To have and to hold the said office of Arbitrator during our pleasure.

In Testimony whereof we have caused these our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. Witness our Right Trusty and well-beloved Cousin the Right Honourable Charles Stanley, Viscount Monck, Baron Monck of Ballytrammon, in the County of Wexford, in the Peerage of Ireland, and Baron Monck of Ballytrammon, in the County of Wexford, in the Peerage of the United Kingdom of Great Britain and Ireland, Governor-General of Canada, &c., &c., &c.

At the Government House in our City of Ottawa, this twenty-third day of May, in the year of our Lord one thousand eight hundred and sixty eight, and in the thirty-first year of our Reign.

By Command,

HECTOR L. LANGEVIN,
Secretary of State.

SEAL

N. F. BELLEAU.

CANADA.

PROVINCE OF QUEBEC

Patent appointing the Hon. Chas. Dewey Day, Arbitrator for Quebec, under 142 Sec. B. N. A. Act, 1867.

VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c., &c:

To the Honourable Charles Dewey Day, of the City of Montreal, in our Province of Quebec, Greeting:

Know you that reposing trust and confidence in your loyalty, integrity, and ability, We of Our Especial Grace, certain knowledge, and mere motion have nominated, constituted and appointed, and by these presents do nominate, constitute and appoint you, the said Charles Dewey Day, to be, under the provisions of an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the thirtieth year of our reign, entituled "An Act for the Union of Canada, Nova Scotia and New Brunswick, and the Government thereof, and for purposes connected therewith," the Arbitrator chosen by the Government of Quebec, for the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada.

To have, hold, exercise and enjoy the said office of Arbitrator chosen by the Government of Quebec as aforesaid, unto you, the said Charles Dewey Day, with all and every the powers, authority, privileges, emoluments, and advantages to the said office by law appertaining, during our royal pleasure. And we do hereby require that you, the said Charles Dewey Day, do report from time to time the result of your arbitrament, with all convenient speed, to the Lieutenant-Governor of the said Province of Quebec for the time being.

In testimony whereof we have caused these our Letters to be made Patent, and the Great Seal of our said Province to be hereunto affixed.

GEDEON OUIMET,
Attorney-General.

Witness our trusty and well beloved the Honourable Sir Narcisse Fortunat Belleau, Knight, Lieutenant-Governor of our said Province of Quebec, at Quebec, this thirtieth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and in the thirty-first year of our Reign.

By Command,

P. J. O. CHAUVEAU,
Secretary.

Recorded 4th February, 1868,
In Liber A., folio 28.
J. B. MEILLEUR, *Deputy Registrar.*

PROVINCE OF ONTARIO.

SEAL

H. W. STISTED.

Patent appointing the Honourable Lewis Macpherson, arbitrator for Ontario, under 142, Sec. B. N. A. Act, 1867.

VICTORIA, by the Grace of GOD, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, &c., &c.
To the Honourable David Lewis Macpherson, of the City of Toronto, Esquire, and to all to whom these presents shall come, Greeting:

WHEREAS in and by the one hundred and forty-second Section of the British North America Act of 1867, it is enacted that the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada should be referred to the arbitrament of three arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and one by the Government of Canada; and that the selection of the arbitrators should not be made until the Parliament of Canada and the Legislatures of Ontario and Quebec had met; and that the arbitrator chosen by the Government of Canada should not be a resident either in Ontario or Quebec: AND WHEREAS the Parliament of Canada and the Legislatures of Ontario and Quebec have met; and it is right and convenient that the said division and adjustment should be proceeded with: NOW KNOW ye that reposing especial trust and confidence in the loyalty, ability, and integrity of you, the said David Lewis Macpherson, WE of our especial grace and of our will and pleasure do by these presents nominate, constitute and appoint you, the said David Lewis Macpherson to be the Arbitrator for and on behalf of the Government of our Province of Ontario, touching the said matters under the said statute. And we do hereby confer upon you full power and authority as such Arbitrator as aforesaid, to act together with the other arbitrators in the said recited section referred to, in and about the division and adjustment of the debts, credits, liabilities, properties and assets of Upper Canada and Lower Canada, and concerning every matter and thing relating thereto, and to adjudicate and award thereon, by virtue of the said British North America Act of 1867, and according to the true intent and meaning thereof. To have and to hold the said office of Arbitrator as aforesaid during our pleasure.

J. S. MACDONALD,
Attorney-General.

In Testimony whereof we have caused these our Letters to be made Patent, and the Great Seal of our said Province of Ontario to be hereto affixed. Witness, Henry William Stisted, Companion of the Most Honourable Order of the Bath, a Major-General in our Service, and Lieutenant-Governor of our Province of Ontario. At Toronto, the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-eight, and in the thirty-first year of Reign.

By Command,

M. C. CAMERON,

Secretary.

The Honourable Sir John Rose, Minister of Finance of Canada, being present, produced and filed with the Arbitrators copies of certain Minutes of Council in reference to the public debt of the late Province of Canada. The Treasurers of Ontario and Quebec filed a Memorandum in relation to the same subject, which is as follows :—

"The Treasurers of Ontario and Quebec state that the above Orders in "Council have not yet been formally acted upon, by their respective Govern- "ments ; but assent to the same being received, filed and considered *ad interim* "under reserve of the right hereafter to communicate to the Arbitrators such "action of their Governments as shall be taken in the premises.

"E. B. WOOD,

"CHRIST. DUNKIN."

During the proceedings Mr. Langton, the Auditor-General of Canada, was sent for, and questioned as to the matters under consideration.

After discussion the Arbitrators adjourned until Thursday, the second day of September, at 10 o'clock a.m.

SECOND MEETING OF ARBITRATORS.

All Arbitrators present.

Thursday, the second day of September, 1869. The Arbitrators met pursuant to the adjournment. Present : The Honourable John Hamilton Gray, the Honourable David Lewis Macpherson, and the Honourable Charles Dewey Day, Arbitrators ; and the Honourable Mr. Wood on behalf of Ontario, and the Honourable Mr. Dunkin on behalf of Quebec.

Order of Arbitrators.

After discussion the Arbitrators ordered that the following statements should be prepared by Mr. Langton, the Auditor-General of Canada, and to be by him submitted and sent as follows :—

"1. A statement in detail by the Auditor-General of the assets enumerated "in the Fourth Schedule to the British North America Act, 1867, with such "observations in explanation thereof as he may think necessary.

"2. That the statement be communicated to the Treasurers of the two "Provinces, and that they be called upon either to admit its correctness as "enumerating the total assets to be divided under the Act, or to lay before the "Arbitrators, in writing, such statements as may enable the Arbitrators to judge "of its accuracy, and to add or to amend it if necessary.

"That a further statement be prepared by the Audito. General of the "sums which the Municipal Loan Fund of Upper Canada and of Lower Canada, "respectively, and all other accounts in the statements to be prepared, have "yielded yearly from the first day of January, 1863, up to the first day of July, "1867, respectively; and showing the annual per centage on the capital which "has been paid on each; with any other statement of facts bearing on the value "of the several items in the said statements which he may think necessary; "and these be communicated to the Treasurers of the two Provinces and to "the Arbitrators as soon as possible." Order of Arbitrators as to statements to be prepared by Auditor-General.

The Arbitrators then adjourned to Wednesday, the twenty-second day of September, 1869.

Afterwards, and before the twenty-second day of September, 1869, by mutual arrangement between the Arbitrators and all parties, the meeting for the twenty-second day of September, 1869, was postponed to the seventh day of October, 1869, and from the seventh day of October, 1869, to the twenty-third day of the same October.

THIRD MEETING OF ARBITRATORS.

The Arbitrators met at the City of Ottawa, at the place of their former meeting, on the twenty-third day of October, 1869, pursuant to arrangement between all parties. Present:—The Honourable John Hamilton Gray, the Honourable David Lewis Macpherson, and the Honourable Charles Dewey Day, the Arbitrators. The Honourable Mr. Dunkin appeared on behalf of Quebec, and the Honourable Mr. Wood, with the Honourable John Hillyard Cameron as his Counsel, appeared on behalf of Ontario. All Arbitrators present.

The Court of Arbitration proceeded with the reference, and after hearing arguments from Counsel in regard to the subject matter of the reference, and the discussion had in relation thereto, adjourned to Monday, the twenty-fifth day of October, 1869, at 11 o'clock a.m., at the same place. Arbitration proceeded with.

FOURTH MEETING OF ARBITRATORS.

The Arbitrators met at the City of Ottawa, at the place of their former meetings, on the twenty-fifth day of October, 1869. Present:—All the three Arbitrators, Messrs. Wood and Cameron appeared on behalf of Ontario, and Messrs. Dunkin and Ritchie on behalf of Quebec. All Arbitrators present.

The Arbitrators after hearing discussions and arguments from Counsel on both sides, upon the subject matter of the reference, adjourned to Tuesday, the twenty-sixth day of October, to meet at the same place, at 10 o'clock a.m. Arguments heard.

FIFTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The arbitrators met pursuant to adjournment, at the City of Ottawa, at the place of their former meetings, on the twenty-sixth day of October, 1869. Present: All the Arbitrators. Messrs. Wood and Cameron appeared for Ontario, and Messrs. Dunkin and Ritchie for Quebec.

Arguments heard.

The Arbitrators proceeded with the reference, and after hearing arguments and discussions of the Counsel on both sides, adjourned to next day, to meet at the same place at 11 o'clock a.m.

SIXTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators on the twenty-seventh day of October, 1869, met at the place and time aforesaid. Present: All the Arbitrators. The Honourable Mr. Dunkin announced that he had resigned the office of Treasurer of Quebec, in accordance with the statement made by him informally on Monday last. Messrs. Casault with Mr. Ritchie appeared on behalf of Quebec, and Messrs. Wood and Cameron on behalf of Ontario.

Mr. Dunkin's resignation as Treasurer of Quebec.

Mr. Casault stated that the Honourable Mr. Irvine was to have been present, but that unforeseen circumstances had prevented his attending; however he was informed that the Honourable Mr. Chauveau, the Premier of the Quebec Government, intended to be in Ottawa that day, and until receiving instructions from him, Mr. Ritchie and himself declined to assume any definite responsibility in the matter, in consequence of the change in Mr. Dunkin's position.

Mr. Wood, the Treasurer of Ontario, and Mr. Cameron with him, stated that they were prepared to proceed, on behalf of Ontario, with full responsibility for the Government of Ontario.

The Arbitrators thereupon adjourned until five o'clock p.m.

SEVENTH MEETING OF ARBITRATORS.

All the Arbitrators present.

At five o'clock on the same day and at the same place as last aforesaid, the three Arbitrators met. The Honourable Mr. Chauveau, the Premier of the Quebec Government, and with his Counsel, Messrs. Casault and Ritchie, appearing on behalf of Quebec, and Messrs. Wood and Cameron on behalf of Ontario, when, after further hearing from both parties on the subject matter of the said reference, the Arbitrators made the following order.

Order

"The Counsel for the Provinces of Quebec and Ontario shall prepare and "print their respective cases, and communicate them to each other for such "observations in response as they may deem necessary. The cases shall be "communicated to the Arbitrators (together with an authoritative declaration "by the Governments of Quebec and Ontario respectively, of their agreement

"with the Dominion Government in the matter of the amount of debt of the "Province of Canada), on or before the fifteenth day of January next. of the Arbitrators as to printing cases and exchange of same.

"The Arbitrators may order either *mero motu*, or, upon the suggestion "of Counsel, an oral argument upon such points as they may deem necessary."

The Arbitrators then adjourned to meet again on the day of the opening of the next Session of the Dominion Parliament (the fifteenth day of February, 1870, at noon).

EIGHTH MEETING OF ARBITRATORS.

The Arbitrators met at the City of Ottawa, on the fifteenth day of February, 1870, pursuant to the adjournment. All the Arbitrators were present. All the Arbitrators present.
Messrs. Chauveau, Casault, and Ritchie, and Mr. Drolet appeared on behalf of Quebec. Messrs. Wood and Cameron not appearing on behalf of Ontario, the Arbitrators adjourned until Thursday, the seventeenth day of February, 1870, at noon. No progress made.

NINTH MEETING OF ARBITRATORS.

The Arbitrators met on the seventeenth day of February, 1870, at the City of Ottawa, pursuant to adjournment, in the rooms of the Civil Service Board. All the three Arbitrators were present. All the Arbitrators present. Mr. Chauveau, the Premier of Quebec, Mr. Robertson, the Treasurer of Quebec, and Mr. Drolet, Accountant in the Treasury Department of Quebec, and with them their Counsel, Messrs. Casault and Ritchie, appeared on behalf of Quebec; and Messrs. Wood and Cameron on behalf of Ontario.

It appeared that the *cases* of the two Provinces had been respectively interchanged, and also sent to the Arbitrators, as required by the order of the 27th of October, 1869; but that no statement had been furnished of any settlement by the Provinces with the Dominion Government as to the definite amount of the debt, as required by that order. Cases interchanged. Definite amount of debt not settled or agreed on.

Mr. Casault then addressed the Arbitrators as to the preliminary objection raised as to the jurisdiction of the Arbitrators over the debts and assets enumerated in the Fourth Schedule to the British North America Act, 1867. Mr. Cameron was heard in reply. The Arbitrators heard arguments of Counsel.

The Arbitrators reserved judgment until the next day, to which they then adjourned, to meet in the same place, at 11 o'clock, a.m.

TENTH MEETING OF ARBITRATORS.

The Arbitrators met on the eighteenth day of February, at their last place of meeting, at 11 o'clock, a.m., pursuant to adjournment. All the Arbitrators All the Arbitrators present.

were present. The same persons appeared for Ontario and Quebec respectively as were present at the last meeting; when the Honourable Charles Dewey Day, the Arbitrator chosen by Quebec, delivered the opinion of the Court of Arbitrators on the point argued at the previous meeting, raised by the Counsel for Quebec, namely, "*that the Court of Arbitration had no jurisdiction over the "subject matter of the assets enumerated in the Fourth Schedule to the British "North America Act*, 1867," and the following judgment was unanimously pronounced by the Court of Arbitration :—

Question

Judgment of Arbitrators.

"The Arbitrators having heard Counsel upon the objection raised in behalf "of the Government of Quebec, to their jurisdiction over the subject matter of "the assets enumerated in Schedule Four of the British North America Act, "1867, and duly considered the question, are of opinion, and do adjudge, that "the assets so enumerated make part of the property and assets, the division "and adjustment whereof has been referred to them under the provisions of "Section 142 of the said Act; and that they have by the said Act authority to "divide and adjust the same."

Proposition of Mr. Cameron—principle or mode of division.

Mr. Cameron then on behalf of Ontario, proposed to go into the argument upon the proposition as to *the principle or mode of the apportionment of the excess of debt over and above* $62,500,000 *of the late Province of Canada, between Ontario and Quebec, and the division between them of the assets belonging to the late Province of Canada under the British North America Act*, 1867, to which Messrs. Casault and Ritchie objected, contending that such a course would be exceptional.

Objected to by Messrs. Casault and Ritchie.

Argument heard.

After hearing counsel on both sides as to whether the hearing of the argument on that point (the principle and mode of apportionment of the excess of debt and the division of the assets), and a decision thereon at that stage of the arbitration, would or would not expedite the business, the Arbitrators reserved judgment until next meeting.

Adjournment.

The Arbitrators then adjourned until Monday, the twentieth day of February, 1870, at 11 o'clock a.m.

ELEVENTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met at the place last aforesaid, on the twentieth day of February, 1870, at 11 o'clock a.m., pursuant to adjournment. All the Arbitrators were present. The same persons were present for Ontario and Quebec respectively, as were present at the last meeting.

Decision of Arbitrators.

The Arbitrators declared their opinion that it was not desirable to interfere with the ordinary mode of proceedings in such cases; and that, therefore, they would not at present hear the argument upon the point raised by Mr. Cameron and objected to by Quebec.

Argument heard on Indian Annuities.

By agreement the Counsel proceeded to the argument on the claim of Quebec to charge against Ontario, the capitalized portion of the "Indian Annuities."

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Messrs. Casault and Ritchie were heard for Quebec, and Mr. Cameron for Ontario. The argument was closed, and the Arbitrators adjourned until next day, to meet at 11 o'clock a.m.

Arbitrators adjourned.

TWELFTH MEETING OF ARBITRATORS.

The Arbitrators met at the place aforesaid, on Tuesday, the twenty-first day of February, 1870, at 11 o'clock a.m. All the Arbitrators were present. The same persons appeared, and with them the Honourable Mr. Chauveau, the Premier of Quebec, and the Honourable Mr. Beaubien, the Commissioner of Crown Lands for Quebec, on behalf of Quebec. Mr. Wood and Mr. Cameron appeared on behalf of Ontario.

All the Arbitrators present.

The Counsel selected and proceeded with the argument as to *the principle and mode of the apportionment of the excess of the debt of the late Province of Canada, over and above* $62,500,000, *and of the division of the assets belonging to the late Province of Canada, under the British North America Act,* 1867.

Argument heard on principle or mode of decision.

Mr. Cameron opened the case, and closed his argument on behalf of Ontario, contending that the basis of the population or the basis of the origin of local debts, was the correct and proper principle and mode on which such apportionment and division should take place.

Mr. Cameron heard.

Counsel for Quebec to be heard the next day.

The Court of Arbitration adjourned, to meet at the same place next day, at 11 o'clock a.m.

Arbitrators adjourned.

THIRTEENTH MEETING OF ARBITRATORS.

The Arbitrators met on Wednesday, the twenty-second day of February, 1870, at their last place of meeting, at 11 o'clock a.m., pursuant to adjournment. All the Arbitrators were present. The same persons who at the last preceding meeting appeared on behalf of Ontario and Quebec respectively, were present.

All the Arbitrators present.

Mr. Casault was heard in answer to Mr. Cameron on behalf of Quebec, on the principle and mode of the apportionment of the excess of debt and the division of assets.

Mr. Casault heard in answer to Mr. Cameron.

The Arbitrators then adjourned, to meet at the same place on Friday, the twenty-fifth day of February, 1870, at 11 o'clock a.m.

Arbitrators adjourned.

FOURTEENTH MEETING OF ARBITRATORS.

The Arbitrators met on Friday, the twenty-fifth day of February, 1870, at their last place of meeting, at 11 o'clock a.m., pursuant to adjournment.

All the Arbitrators present.

All the Arbitrators were present, and the same persons who at the last preceding meeting appeared on behalf of Ontario and Quebec respectively were present.

Mr. Ritchie heard in support of Mr. Casault, Messrs. Cameron and Wood in reply.

Mr. Ritchie was heard in support of Mr. Casault on behalf of Quebec.

Mr. Cameron and Mr. Wood were heard in reply on behalf of Ontario, and the argument was closed on both sides.

Arbitrators adjourned.

The Arbitrators adjourned, to meet next day, Saturday, the twenty-sixth day of February, 1870, at the same place, at noon.

FIFTEENTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met on Saturday, the twenty-sixth day of February, 1870, at their last place of meeting, at noon, pursuant to adjournment. All the Arbitrators were present. Counsel and other officials interested appeared as at the last preceding meeting.

Arbitrators consult and take time for deliberation.

The Arbitrators, after some time spent in the consideration of the questions submitted, agreed that it was necessary to take time to look into the points raised, and the arguments offered for and against the same, and they intimated that they hoped they would be prepared to announce their decision thereon on the Monday then following, viz. : the twenty-eighth day of February, 1870.

Arbitrators adjourned.

The Arbitrators then adjourned, to meet at the same place on Monday, the twenty-eighth day of February, 1870, at 11 o'clock, a. m.

SIXTEENTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met on Monday, the twenty-eighth day of February, 1870, at their last place of meeting, at 11 o'clock a.m. All the Arbitrators were present. Counsel appeared on behalf of Ontario and Quebec respectively.

Arbitrators not prepared to give a decision, and adjourn to meet at some future day.

The Arbitrators declared to the Counsel and Treasurers of the two Provinces that they were not prepared to give a decision on the points argued ; and that they should adjourn, and would notify the Counsel at some future day when they would be prepared to meet again.

The Arbitrators adjourned accordingly.

SEVENTEENTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met at the City of Montreal, on the twenty-sixth day of May, 1870, for consultation on the points and arguments submitted on *the principle and mode of the apportionment of the excess of debt over and above*

Meeting for consultation

$62,500,000, *and the division of assets belonging to the late Province of Canada,* pursuant to arrangement between the Arbitrators, all of whom were present.

A letter from Messrs. Casault and Ritchie, addressed to the Arbitrators, was received, enquiring whether two printed pamphlets, one purporting to be "Mr. Wood's Argument before the Arbitrators," the other styled "Proceedings of the Provincial Arbitrators, Ontario and Quebec," are to be received by the Arbitrators. Secondly: Whether the publication of the latter had been authorized by them, and whether such Report is correct? Whereupon the following minute was agreed to:— Letter of Messrs. Casault and Ritchie as to two pamphlets.

"1. That the said pamphlets had been received, but had not been accepted "by the Arbitrators as part of the proceedings before them. Minute of Arbitrators on the pamphlets.

"2. That the publication of the pamphlet styled 'Proceedings of Provincial "Arbitrators Ontario and Quebec,' was not authorized by them, and that they "are not prepared to enter into a comparison of the alleged Report with their "Record of proceedings.

"3. That a copy of this minute be forwarded to the Counsel both for Ontario "and Quebec." Copy of Minute forwarded to Counsel for Ontario and Quebec.

The Arbitrators then proceeded to discuss among themselves the question, and arguments submitted on the said principle and mode of apportionment of debt and division of assets, and severally read and commented upon their various opinions which they had reduced to writing. Discussion among the Arbitrators by themselves.

The Arbitrators adjourned at six o'clock p.m., to meet the next day. Arbitrators adjourned.

EIGHTEENTH MEETING OF ARBITRATORS.

The Arbitrators met on Friday, the twenty-seventh day of May, 1870, pursuant to adjournment, all being present; and continued their investigations and discussions, and adjourned at six o'clock p.m., to meet the next day.

NINETEENTH MEETING OF ARBITRATORS.

The Arbitrators met on Saturday, the twenty-eighth day of May, 1870, and continued their investigations and discussions. Propositions of the Honourable Charles Dewey Day.

The Honourable Charles Dewey Day submitted the following propositions:—

"1. It is proposed that the relation of Upper and Lower Canada created "by the Union Act, of 1840, be regarded as an association in the nature of a uni-"versal partnership; and that the division and adjustment of the debts and "assets under the British North America Act, 1867, be made according to the "rules which govern in such associations, in so far as they can be made to apply.

"2. It is proposed that the state of indebtedness of each of the Provinces of "Upper and Lower Canada at the time of the Union in 1841, be taken into consid-"eration by the Arbitrators, with a view to charge the Provinces of Ontario and

"Quebec respectively with the debt due by Upper Canada and Lower Canada re-
"spectively at that time; and that the remainder of the surplus debt (excess of
"debt of the late Province of Canada over and above $62,500,000) after such
"debts have been deducted from it (and charged to the respective Provinces),
"be equally divided between the said Provinces.

"3. It is proposed that the assets specified in the Fourth Schedule to the
"British North America Act, 1867, and all other assets to be divided and ad-
"justed under the authority of that Act, be divided equally, according to their
"value."

1st proposition negatived.

Upon the question on the first proposition of the Honourable Charles Dewey Day being put, it was negatived as follows: For the proposition, the Honourable Charles Dewey Day; against it, the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray.

2nd proposition negatived.

Upon the question on the second proposition of the Honourable Charles Dewey Day being put, it was negatived as follows: For the second proposition, the Honourable Charles Dewey Day; against it, the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray.

3rd proposition negatived.

Upon the question on the third proposition of the Honourable Charles Dewey Day being put, it was decided in the negative as follows: For the third proposition, the Honourable Charles Dewey Day; against it, the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray.

Whole three propositions negatived.

So the whole three propositions of the Honourable Charles Dewey Day were rejected.

Grounds of dissent of the Honourable David Lewis Macpherson to the propositions of the Honourable Charles Dewey Day.

The Honourable David Lewis Macpherson then submitted the following grounds of dissent to the above propositions of the Honourable Charles Dewey Day, which were entered on the Minutes of the Proceedings of the Arbitrators, viz:—

"1. Because, in his opinion, the Union of 1841 between Upper Canada
"and Lower Canada was not analogous to an ordinary association or partnership
"between individuals, and that the rules of law applicable to the latter are not
"applicable to a political union, effected by the authority of a Parliamentary
"power, between two Provinces.

"2. Because, in his opinion, the Arbitrators have no authority to inquire
"into or consider the financial condition of Upper Canada and Lower Canada
"respectively, anterior to or at the time of their union in 1841, with a view of
"rectifying, at the expense of Ontario, any supposed advantage alleged by the
"Counsel for Quebec—alleged unjustly, in his (Mr. Macpherson's) opinion—to
"have accrued to Upper Canada under the Union Act of 1840.

"3. Because, in his opinion, if the Arbitrators were to do so, they would
"transcend their power, and would inflict gross injustice on Ontario, by imposing
"upon that Province eleven-fourteenths of the whole surplus debt (that is, the
"excess of the debt of the late Province of Canada over and above $62,500,000),
"or reducing it to figures, and assuming the excess of debt to be $10,500,000,
"it would cast upon Ontario the sum of $8,250,000, and upon Quebec
"$2,250,000.

"4. Because, in his opinion, while the propositions of the Honourable
"Charles Dewey Day profess to favour an equal division of the debts and assets

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"the result of a division under them would be most unequal and unjust, inas-
"much as Quebec would get one-half of the value of the assets, while required
"to bear only three-fourteenths of the surplus debt."

The Honourable David Lewis Macpherson than submitted the following proposition, namely :—

Proposition of the Honourable David Lewis Macpherson negatived.

"That the division and adjustment of the surplus debt, and of the assets
"owned conjointly by Ontario and Quebec, be upon the basis of the population
"of those Provinces as shown by the census of 1861."

Upon the question on this proposition being put, it was negatived on the following division :—For the proposition, the Honourable David Lewis Macpherson ; against it, the Honourable Charles Dewey Day, and the Honourable John Hamilton Gray.

So the proposition of the Honourable David Lewis Macpherson was rejected.

Reasons of the Honourable John Hamilton Gray for dissenting from the propositions of the Honourable Charles Dewey Day.

The Honourable John Hamilton Gray then expressed his reasons for dissenting from the propositions laid down by the Honourable Charles Dewey Day, which were entered on the Minutes of the Proceedings of the Arbitrators, as follows:—

"Because, for the reasons already assigned, he thinks the Union of Upper
"and Lower Canada by the Imperial Act of 1840 cannot be likened to a part-
"nership or mercantile association of any character, and that the Arbitrators
"have no power and ought not to enter into the consideration of the political
"or financial state of Upper or Lower Canada previous to the Union, or the
"equivalents or inducements influencing the Imperial Government or the Pro-
"vinces, which led to it. That the Union of 1841, in pursuance of that Act,
"concludes all enquiry into matters antecedent thereto, and that from that
"time, for all purposes now under their consideration, Upper and Lower Canada
"must be regarded as one, and the present division and adjustment be decided
"on grounds entirely irrespective of the position of either Upper or Lower
"Canada at the time of the Union."

He then submitted the following proposition :—

Proposition submitted by the Honourable John Hamilton Gray.

"That the division and adjustment of the surplus debt and assets, owned
"conjointly by Ontario and Quebec, and enumerated in Schedule Four of the
"British North America Act, 1867, be based upon the origin of the debts, and
"that the expenditure made in creating each of said assets be taken as the value
"thereof ; the Arbitrators having no right to enquire into or adjudicate upon
"the policy or advantages of expenditures made by authority of Parliament."

Affirmed.

Upon the question on this proposition being put, it was affirmed on the following division :—For the proposition, the Honourable John Hamilton Gray, and the Honourable David Lewis Macpherson ; against it, the Honourable Charles Dewey Day. So the proposition of the Honourable John Hamilton Gray passed in the affirmative.

Memorandum of the Honourable David Lewis Macpherson.

The Honourable David Lewis Macpherson at the same time submitted the following Memorandum, to be entered on the Minutes of the Proceedings of the Arbitrators, which was accordingly done, viz :—

"That while adhering to his preference for population as the basis for
"division and adjustment of the debts, credits, liabilities, properties and assets
"of Upper Canada and Lower Canada, he nevertheless assents to Colonel
"Gray's proposition, with the view of arriving at some basis, and believing that
"under it a just award may be made."

Judgment ordered to be communicated.

It was then ordered that the following Judgment be communicated to the Counsel of both Provinces.

JUDGMENT.

Judgment.

The Arbitrators under the British North America Act, 1867, having carefully considered the statements made and the propositions submitted respectively by and on the behalf of the Provinces of Ontario and Quebec, and having heard Counsel at length thereupon, do award and adjudge as follows :—

"1st. That the Imperial Act of Union, 3rd and 4th Victoria, Chapter 35, "did not create in fact or in law any partnership between Upper and Lower "Canada, nor any such relations as arise from a state of co-partnership between "individuals.

"2nd. That the Arbitrators have no power or authority to enter upon any "enquiry into the relative state of the debts and credits of the Provinces of "Upper and Lower Canada, respectively, at the time of their Union in 1841, "into the Province of Canada.

"3rd. That the division and adjustment between Ontario and Quebec of "the surplus debt—beyond $62,500,000—for which under the 112th Section of "the B. N. A. Act, 1867, Ontario and Quebec are conjointly liable to Canada, "shall be based upon the origin of the several items of the debts incurred by "the creation of the assets mentioned in the Fourth Schedule to that Act, and "shall be apportioned and borne separately by Ontario and Quebec, as the same "may be adjudged to have been originated for the local benefit of either; and "where the debt has been incurred in the creation of an asset for the common "benefit of both Provinces, and shall be so adjudged, such debt shall be divided "and borne equally by both.

"4th. That where the debt under consideration shall not come within the "purview of the Fourth Schedule, whether the same shall or shall not have left "an asset, reference shall be had to its origin under the same rule as in the last "preceding section laid down.

"5th. That the assets enumerated in the Fourth Schedule to the B. N. A. "Act, 1867, and declared by the 113th Section to be the property of Ontario "and Quebec conjointly, shall be divided and adjusted, and appropriated or "allowed for, upon the same basis.

"6th. That the expenditure made by the creation of each of the said assets, "shall be taken as the value thereof: and where no asset has been left, the "amount paid shall be taken as the debt incurred—the Arbitrators having no "right to enter into or adjudicate upon the policy or advantages of expenditures "or debts incurred by authority of, and passed upon by Parliament.

"7th. It is therefore ordered that, in accordance with the above decision, "the Counsel for the said Provinces of Ontario and Quebec, do proceed with "their respective cases.

"J. H. GRAY,
"D. L. MACPHERSON.

"Montreal, May 28th, 1870."

Arbitrators adjourned.

The Arbitrators then adjourned to meet at Montreal, on some future day to be agreed on.

The Honourable Charles Dewey Day, subsequently to the adjournment, requested that the decision arrived at should not be communicated to Counsel until he could be heard from in a few days.

Subsequently, the Honourable Charles Dewey Day sent to the other two Arbitrators, to be entered upon the Minutes of the Proceedings of the Arbitrators, his dissent from the foregoing judgment or decision, which is as follows :— Dissent of the Hon. Chas. Dewey Day.

DISSENT

of the Hon. Charles Dewey Day to the foregoing decision of the Arbitrators.

"The undersigned Arbitrator dissents from the foregoing award and judgment of the Hon. D. L. Macpherson and the Hon. J. H. Gray, two of the "Arbitrators appointed under the B. N. A. Act, 1867.

"1st. Because the said award and judgment purports to be founded on "propositions which, in the opinion of the undersigned, are erroneous in fact "and in law, and inconsistent with the just rights of the Province of Quebec.

"2nd. Because the relation of the Provinces of Upper and Lower Canada, "created by the Union of 1841, ought to be regarded as an association in the "nature of a universal partnership, and the rules for the division and adjustment of the debts and assets of Upper and Lower Canada, under the authority of the said Act, ought to be those which govern such associations, in so far "as they can be made to apply in the present case.

"3rd. Because the state of indebtedness of each of the Provinces of Upper "and Lower Canada, at the time of the Union of 1841, ought to be taken into "consideration by the Arbitrators, with a view to charge the Provinces of "Ontario and Quebec respectively with the debt due by each of the Provinces "of Upper and Lower Canada at that time—and the remainder of the surplus "debt of the late Province of Canada ought to be equally divided between the "said Provinces of Ontario and Quebec.

"4th. Because the assets specified in Schedule Four, and all other assets "to be divided under the authority of the said Act, ought to be divided equally "according to their value.

"5th. And therefore the undersigned presents an award and judgment based "upon his foregoing propositions, and upon the reasons assigned in his printed "opinion (marked B) in the terms following, which in his view of the case ought "to be rendered, namely :—The Arbitrators, under the B.N.A. Act, 1867, having "seen and examined the propositions submitted on the part of the Provinces of "Ontario and Quebec respectively, for the division and adjustment of the debts "and assets of Upper Canada and Lower Canada, under the authority of the said "Act, and having heard Counsel for the said Provinces respectively upon each "of the said propositions, after due consideration thereof, are of opinion that the "propositions submitted on behalf of the Province of Ontario do not, nor does "either of them, furnish any legal or sufficient rule or just basis for such division "and adjustment; and they do award and adjudge that the said division and "adjustment ought to be made according to the rules which govern the partition "of the debts and property of associations known as universal partnerships, in "so far as such rules can be made to apply. And the Arbitrators having also "heard Counsel for the Provinces of Ontario and Quebec respectively, upon the

"objection made in behalf of the former Province to the jurisdiction and author-
"ity of the Arbitrators to enquire into the state of the debts or credits of the
"Provinces of Upper and Lower Canada prior to the Union of 1841, or to deal in
"any way with either the debts or credits with which either Province came into
"the Union at that time, and duly considered the same, are of opinion that the
"said objection is unfounded, and that they have authority and are bound by the
"provisions of the said Act to enquire into the state of the debts and credits of
"the Provinces of Upper and Lower Canada, existing at the time of the Union
"of 1841, and so to deal with them as may be necessary for a just, lawful and
"complete division and adjustment of the debts and assets of the said Provinces.
"And thereupon it is ordered that the Counsel for the Provinces of Ontario and
"Quebec do proceed, in accordance with the foregoing judgment, to submit such
"statements in support of their respective claims as they may deem expedient.

"C. D. DAY,
"*Arbitrator.*"

TWENTIETH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met at the City of Montreal, in the room of the Court of Appeals, on the fifth day of July, 1870, pursuant to agreement and notice to all parties. All the Arbitrators were present. There appeared on behalf of Quebec the Honourable Mr. Robertson, Treasurer, the Honourable Mr. Chauveau, the Premier, the Honourable Mr. Irvine, Solicitor-General, and Mr. Ritchie; and on behalf of Ontario, the Honourable J. Sandfield Macdonald, Premier, the Honourable Mr. Wood, Treasurer, and the Honourable J. Hillyard Cameron.

Hon. J. H. Gray submitted a communication from the Government of Quebec. Copy of Report of a Committee of the Executive Council of Quebec.

The Honourable John Hamilton Gray submitted a communication from the Government of Quebec, that had been addressed to each of the Arbitrators separately, which was read, and is as follows:—

"Copy of a Report of a Committee of the Honourable the Executive Council, "approved by His Excellency the Lieutenant-Governor in Council, on the sixth "day of June, 1870.

"No. 131. On the requirements of the British North America Act of "1867, respecting the Judgment of the Arbitrators.

"The Honourable the Treasurer of the Province reports that it is the opinion "of the law officers of the Crown that, whereas the 142nd section of the B.N.A. "Act of 1867 enacts that the division and adjustment of the debts, credits, lia-"bilities, properties and assets of Upper Canada and Lower Canada shall be "referred to the arbitrament of three arbitrators, it is essential to the validity of "any decision to be given by such arbitrators, that their judgment should be "unanimously concurred in. He, therefore, recommends that a despatch be "transmitted to His Excellency the Governor-General with the views of this "Government, and requesting that no judgment of the said Arbitrators which "is not so unanimously concurred in be received.

"The Committee concur in the foregoing report, and submit the same for "the Lieutenant-Governor's approval.

"FELIX FORTIER,
"*C. E. C.*"

[Copy.]

"Province of Quebec,
"Secretary's Office, Quebec, 6th June, 1870.

Letter from the Asst. Prov. Sec. Quebec to Hon. J. H. Gray.

"Sir,—I have the honour to transmit for your information copy of an Order "in Council approved by His Excellency the Lieutenant-Governor of this Pro- "vince, and on which a despatch has been founded and transmitted to His Ex- "cellency the Governor-General.

"I have the honour to be, Sir,
"Your most obedient servant,
"T. J. JOLICŒUR,
"*Asst. Prov. Sec.*

"To the Hon. J. H. Gray."

Discussion.

After the reading of the foregoing papers, an irregular discussion took place between Counsel on both sides, as to the order of proceedings, in which considerable time was spent without any definite conclusion having been arrived at.

Arbitrators adjourned.

The Arbitrators then adjourned, to meet again at the same place the next day at 10 o'clock, a.m.

TWENTY-FIRST MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met at the place of their last preceding meeting on Wednesday, the 6th day of July, 1870, pursuant to adjournment. All the Arbitrators were present, as also all the parties for Ontario and Quebec respectively as were present on the last preceding meeting.

Arbitrators called upon to give decision.

The Honourable J. Hillyard Cameron called upon the Arbitrators to pronounce their decision upon the points argued before them in the month of February, 1870, and upon which it was understood a judgment would be delivered at the present meeting.

Demand that before decision, Counsel for Quebec should be heard on question of 'unanimity.'

The Honourable Mr. Irvine demanded that before any decision on these points was delivered, Counsel on behalf of Quebec should be heard on the point of "unanimity" raised by the Government of Quebec. After hearing argument of Counsel on both sides on this point, the Arbitrators delivered their opinions *seriatim*.

Opinions of Arbitrators.

Honourable Charles Dewey Day was of opinion that Counsel should be heard on the question of unanimity before the formal announcement of the said decision.

The Honourable David Lewis Macpherson was of opinion that the decision should be announced at once.

The Honourable John Hamilton Gray concurred in the views of the Honourable Charles Dewey Day, that, before the decision was announced, the argument of Counsel should be heard on the question of unanimity.

Majority in favour of Quebec.

A majority deciding in favour of the proposition of Quebec, the argument was proceeded with.

Arguments heard.

Messrs. Ritchie and Irvine were heard on behalf of Quebec, and Messrs. Cameron and Wood on behalf of Ontario; and Mr. Irvine was heard in reply.

Arbitrators adjourned.

The Arbitrators then adjourn[illegible] the next day at ten o'clock, a.m.

TWENTY-SECOND MEETING OF ARBITRATORS.

The Arbitrators met at the place of their last meeting on the seventh day

All the Arbitrators present.

of July, 1870. Present: All the Arbitrators and all the parties as at the last preceding meeting.

Arbitrators adjourned.

The Arbitrators stated that, in consequence of the Honourable Charles Dewey Day not feeling very well, they should adjourn until the next day at ten o'clock a.m.

TWENTY-THIRD MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met at the place of their last meeting on the eighth day of July, 1870, at ten o'clock a.m., pursuant to adjournment. Present: All the Arbitrators and all parties as at the last preceding meeting, with the exception of Messrs. Robertson and Irvine

Difference of opinion as to delivery of judgment

The Arbitrators announced that there was a difference of opinion between them respecting the delivery of any preliminary judgment; the Arbitrator for Ontario contending that the judgment should be delivered; the Arbitrator for Quebec, on the other hand, being of opinion that it should be reserved until the final hearing of all arguments on both sides, when it might be delivered or not, as rendered necessary or unnecessary by the points raised being otherwise disposed of, or remaining to be adjudicated upon. The Arbitrator appointed by the Dominion thereupon desired an adjournment until next day, at eleven o'clock, to determine as to the course to be pursued; and an adjournment took place accordingly.

Arbitrators adjourned.

TWENTY-FOURTH MEETING OF ARBITRATORS.

All the Arbitrators present.

The Arbitrators met at the place of their last meeting on the ninth day of July, 1870, at eleven o'clock a.m., pursuant to adjournment. All the Arbitrators were present, and all parties as at the last preceding meeting.

The Honourable John Hamilton Gray, the Arbitrator appointed by the Dominion, then read the following opinion respecting the delivery of the judgment or decision of the Arbitrators on the points argued in the month of February last, as follows:—

Opinion of Hon. J. H. Gray.

OPINION OF THE ARBITRATOR appointed by the Dominion Government.

"In deciding on the point of difference between my two colleagues, it is "necessary briefly to recur to certain facts. In the arguments that took place "at Ottawa, in February last, upon the different modes for the adjustment and "division of the debts and assets referred to us under the 142nd Section of the "B. N. A. Act, the Arbitrators were called upon by the Counsel for Ontario to "dispose of, in the first instance, the important question of partnership raised "by the Counsel for Quebec. This was objected to by the latter, and, after "consideration, the Arbitrators on the following day sustained the objection. "The arguments were then continued for several days by the Counsel on both "sides, and the several modes of division suggested by Ontario and Quebec "including the above question of partnership, were fully discussed, some of the "members of the Government of each of those Provinces being present each "day; and the Arbitrators, at the close of the argument, were urgently pressed "by the Counsel on both sides to determine and declare the mode under which "the division and adjustment should proceed, as preliminary to any further "action, notwithstanding that the Arbitrators had previously expressed their

"opinion that decisions on these preliminary points w. not desirable, but that Opinion—
"it would be better to go on, enter fully into the case on both sides and decide Continued.
"upon the whole as ultimately might be deemed right.

"In accordance with the wishes expressed both by Ontario and Quebec, "and solely in accordance with those wishes, the Arbitrators did proceed to "consider the questions submitted and the arguments, and after a long and "laborious consultation, extending over several days, held at Montreal in May "last, came to a decision, but which decision was not unanimous. That decision "was by the three Arbitrators ordered to be entered in the minute book, and "to be communicated to the Counsel for the two Provinces respectively At "the subsequent request of the Arbitrator for Quebec, made to the other two "Arbitrators separately after their adjournment on the 28th May last, that "communication was delayed for a short time, and was, on further request "still further delayed. The decision was entered as directed. About th. "16th June last, the Arbitrators severally received from the Government of "Quebec a Minute of Council of that Government, expressing the opinion of "the law officers of that Government, that it was essential to the validity of "any decision by the Arbitrators that their judgment should be unanimously "concurred in.

"The communication of the decision arrived at on the 28th May last, was "therefore postponed until the action of the Arbitrators could be determined "on this point at their meeting, which was to take place at Montreal, on the "first Tuesday in July, though the Arbitrator for Ontario demanded that the "Counsel of both Governments should have the decision communicated to them "in obedience to the order made in that behalf, and unanimously concurred in "by all the Arbitrators.

"On the first day of the meeting in July, at Montreal, the fact of the "receipt of this communication from the Government of Quebec was announced. "A demand was then made on behalf of the Government of Quebec, that "Counsel should forthwith be heard on that point ; and after denial by the "Counsel for Ontario of the right of the Government of Quebec to make any com- "munication to the Arbitrators which was not at the same time made to the Coun- "sel or Government of Ontario, and a demand made that a decision arrived at in "May last should be first declared, the question was submitted, and the Arbitrators "decided by a majority that Quebec should be heard on the point of unanimity.

"After full argument, the Arbitrators adjourned until the 7th, and then "further adjourned until the 8th. At the meeting on the 8th, the Arbitrator "appointed by the Dominion, announced that there was a difference of opinion "between his colleagues. That the Arbitrator for Quebec expressed his objec- "tion to the announcement of the decision arrived at on the 28th May last, or "of any other preliminary decision hereafter, and reiterated the views on the "impolicy of such a course, already stated by him, but which course at the re- "quest of the Counsel on both sides had been departed from ; further adding "his belief that such announcement would tend to prevent a harmonious con- "clusion. That the Arbitrator for Ontario, on the contrary, contended that, at "the request of both parties, they had come to a decision ; that the decision "had already been communicated unofficially by both Arbitrators to their re- "spective Governments ; that those Governments had a right to its announce-

Opinion—*Continued.*

"ment, and that it was the duty of the Arbitrators to make the communication "previously ordered. That all efforts to produce an agreement between his "colleagues had failed, and that it was therefore necessary for him to take "twenty-four hours to consider the course he should pursue.

"A discussion, as you are aware, arose on this statement, but resulted in "no amicable arrangement, and I have now to decide.

"If this was a private matter there would be no difficulty about it. Parties "having agreed to a reference, and having requested a decision, whether inter-"locutory or final, must take it unless by consent it is abandoned.

"The point now to be considered is, whether in an important public mat- "ter, such as this arbitration between Ontario and Quebec, sufficient grounds "exist for a departure from the ordinary mode.

"I have exhausted every effort to bring about an agreement on this point "between my two colleagues, and have delayed giving any opinion until com-"pelled by the necessity of the arbitration being either abandoned or proceeded "with. A week has elapsed in unavailing efforts to do so, and I am most re-"luctantly compelled to decide.

"I have to observe that the decision of the 28th May last is not final. It "is not like an award of the arbitrators on the division and adjustment. It is "only an opinion of the majority of them as to the best mode to proceed in the "division. If in working it out it is found to operate unfairly, it is open to be "reviewed and rescinded, and such other mode adopted as may be shown to "lead to a fairer result. It is admitted by the Arbitrator for Quebec that in "proceeding under this mode, the enquiry will necessarily expand itself into the "consideration of much that would be embraced under the view of partnership "advocated by himself; but it does not admit the existence of a partnership, "or limit the investigation to the rules which would govern a partnership.

"No application has been made to have the matter re-heard or re-argued, or "any grounds taken, or alleged, to set aside the decision, or any reason assigned "why it should not be pronounced at this meeting, save that one party does "not wish it, and that its delivery may tend to prevent a harmonious conclu-"sion. If both parties would assent to this, there would be an end of the "matter, for clearly every effort should be made to attain that end.

"The third Arbitrator undoubtedly has a discretion, but the exercise of "that discretion must be on reasonable grounds. It should not be the mere "expression of an arbitrary will. One party demands the delivery of the "decision at the meeting as part of the compact on which the arguments were "heard and the discussion took place. The other admits the compact, but ob-"jects to its being carried out.

"The power to withhold judgments ready to be pronounced is frequently "exercised by tribunals and judges, when it is manifest the interests of the "parties concerned will be promoted; but it is generally by consent, and never "against the will of one of the parties, without good cause shown.

"The decision in this case was communicated by both Arbitrators to their "respective Governments unofficially, and I cannot see any objection to doing "openly what each one has in that respect undertaken to do in his individual "capacity.

"When the judgment is formally pronounced, it will then be optional with

"either Government to assign the grounds of objection, and move for a re- Opinion—
"hearing or rescinding. *Continued.*

"No party will go on with a reference or argument if after both parties "have agreed to the submission, and have been heard—one may render it nuga- "tory the moment he learns the result.

"I have been most desirous to concur with the views expressed by the "Arbitrator for Quebec; but I have sought in vain for some rational ground "on which, if compelled to decide, a refusal to announce the decision on the "28th of May last could be based.

"I cannot find that the decision will inflict any wrong on the party object- "ing. It is not conclusive. It is a mere mode of enquiry, and open to correc- "tion. The decision made by us is no iron rule, but simply in the light of a "guide to be construed liberally.

"It is now earnestly to be hoped that, in view of the great interests at "stake, the parties will proceed without further delay, and that both will unite "in endeavouring to effect a just distribution by the mode recommended, or "failing that, by some other mode.

"I agree, therefore, with Mr. Macpherson, that the decision arrived at on "the 28th of May last, should be formally announced to the Counsel and Pro- "vinces concerned.

"J. H. GRAY."

After the foregoing expression of opinion, the Honourable Charles Dewey Day stated that he could no longer act in the arbitration, as he could not agree in the decision arrived at on the 28th of May; and that he had, therefore, that morning placed his resignation in the hands of the Government at Quebec. He thereupon handed to Messrs. Macpherson and Gray a written notice to that effect, and withdrew. Hon. C. D. Day resigns.

Mr. Chauveau then stated that his Government had received the Honourable Charles Dewey Day's resignation. His resignation received by Quebec.

On the motion of Mr. Cameron, the decision of the 28th May was formally read and pronounced. Decision of 28th May read.

The Honourable Charles Dewey Day's dissent thereto was also read. Dissent also read.

Mr. Ritchie then presented and requested the following memorandum to be filed:—

"The undersigned, of Counsel for the Province of Quebec, hereby respect- "fully represents that the Honourable John Hamilton Gray, the Arbitrator "appointed by the Government of Canada, under the provisions of the B. N. "A. Act, 1867, has become and now is disqualified to act as Arbitrator, inas- "much as the said the Honourable John Hamilton Gray is now, and for a con- "siderable time past has been, a resident of Ontario; and prays that all pro- "ceedings upon this arbitration be stayed until the Government of Canada shall "have appointed a duly qualified Arbitrator in the place and stead of the "Honourable John Hamilton Gray, so disqualified as aforesaid. Memorandum of Mr. Ritchie as to the disqualification of Hon. J. H. Gray.

"T. W. RITCHIE,
"Of Counsel for Quebec."

"Montreal, 9th July, 1870.

Mr. Ritchie also presented the following memorandum, requesting it to be filed :—

Exception by Quebec to decision of Hon. J. H. Gray and Hon. D. L. Macpherson.

"The Province of Quebec respectfully excepts to the decision now rendered by the Honourable John Hamilton Gray and David Lewis Macpherson, "two of the Arbitrators, as not being a valid judgment—not being that of the "Arbitrators.

"Montreal, July 9th, 1870.

"T. W. RITCHIE,
"Of Counsel for Quebec."

Arbitrators adjourned.

The Arbitrators then adjourned to meet again the same day at four o'clock p.m.

TWENTY-FIFTH MEETING OF ARBITRATORS.

Present: Hon. J. H. Gray and Hon. D. L. Macpherson.

The Arbitrators met on the same day as the last preceding meeting, at four o'clock p.m., pursuant to adjournment. Present: The Honourable David Lewis Macpherson and the Honourable John Hamilton Gray. Messrs. Wood and Cameron, and the Attorney-General for Ontario, were present on behalf of Ontario, and Mr. Ritchie appeared on behalf of Quebec.

Arbitrators declined to take further proceedings and adjourned.

The Attorney-General for Ontario proposed to proceed with the investigation. The Arbitrators declined to take further proceedings that day, and decided to adjourn, to meet again at Montreal, on some future day to be agreed upon, and to be notified to all parties.

NOTE.—On the 11th day of July, 1870, the Provincial Secretary of Quebec wrote to the Honourable David Lewis Macpherson and to the Honourable John Hamilton Gray the following letter which was sent to each of them :—

"Secretary's Office,
"Quebec, 11th July, 1870.

"SIR,—I have the honour, by command of His Excellency the Lieutenant-"Governor, to inform you that the Honourable Charles D. Day has tendered his "resignation as Arbitrator of the Province of Quebec, under the 142nd section "of the British North America Act of 1867, and to request that you will be pleased "to stay proceedings until such time as the Government of Quebec, who have the "said resignation under consideration, have come to a decision upon the subject.

"I have the honor to be, Sir,
"Your most obedient Servant,
"PIERRE J. O. CHAUVEAU,
"Secretary.

TWENTY-SIXTH MEETING OF ARBITRATORS.

Arbitrators present: Hon. D. L. Macpherson and Hon. J. H. Gray.

The Arbitrators met at the St. Lawrence Hall, in the City of Montreal, on the twenty-first day of July, 1870, at two o'clock, p.m., pursuant to notice duly given to all parties. The Arbitrators present were the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray. The Honourable John

Hillyard Cameron, the Honourable John Sandfield Macdonald, and the Honourable E. B. Wood were present on behalf of Ontario, and the Honourable George Irvine, Solicitor-General, and T. W. Ritchie, Esq., appeared on behalf of Quebec,

The notice to the Honourable Charles Dewey Day of the meeting to be held that day was then produced and read; the same having been duly posted. and is as follows:—

"Toronto, July 12th, 1870.

Notice to attend meeting of Arbitrators given to Hon. C. D. Day.

"DEAR SIR,—We beg to notify you that we shall meet at the St. Lawrence "Hall Hotel, in Montreal, on Thursday, the twenty-first instant, at two o'clock in the afternoon, to proceed with the arbitration between Ontario and Quebec. under the B. N. A. Act, 1867.

"We are, dear Sir,

"Yours very truly,

"D. L. MACPHERSON, } Arbitrators."
"J. H. GRAY, }

Notice to Quebec.

A similar notice at the same time was sent to Mr. Ritchie, as Counsel for Quebec, which he admitted he had received.

Judgment on question of "unanimity" called for.

Mr. Cameron then called for the delivery of the judgment of the Arbitrators on the question of "unanimity," which had been argued before them at a previous meeting in Montreal.

The Arbitrators then stated that they had severally received, from the Government of Quebec, a communication, which was read and is as follows:—

"Province of Quebec,

"Secretary's Office, Quebec, 19th July, 1870.

Communication informing Arbitrators that resignation of Hon. C. D. Day accepted by Quebec.

"SIR,—I have the honour to inform you that His Excellency the Lieuten-"ant-Governor has been pleased to accept the resignation of the Hon. Chas. "Dewey Day as Arbitrator of the Province of Quebec, under the 142nd Sec-"tion of the B. N. A. Act, 1867, and request that you will be pleased to stay "further proceedings until such time as you receive notice as to their intentions "from the Government of this Province.

"I have, &c.,

"The Hon. J. H. Gray, Ottawa. "P. J. O. CHAUVEAU."

Revocation of Hon. C. D. Day's appointment as Arbitrator for Quebec.

Mr. Ritchie thereupon handed in the revocation, by the Government of Quebec, of the Honourable Charles Dewey Day's appointment, requesting the same to be filed. It is as follows:

"Province of Quebec.

"N. F. BELLEAU.

SEAL. "VICTORIA, by the Grace of God, of the United Kingdom of Great "Britain and Ireland, Queen, Defender of the Faith, &c.

"To all to whom these presents shall come, or whom the same may con-"cern, greeting,

"Whereas in and by our certain Letters Patent, bearing date, at our City of "Quebec, the 30th day of January, in the 31st year of our reign, we did nomi-"nate, constitute, and appoint the Honourable Charles Dewey Day, of the City "of Montreal, in our Province of Quebec, to be, under the provisions af an Act

Revocation *Continued.*

"of the Parliament of the United Kingdom of Great Britain and Ireland, "passed in the thirtieth year of our reign, entitled 'An Act for the Union of "'Canada, Nova Scotia and New Brunswick, and the government thereof, for "'the purposes connected therewith,' the Arbitrator chosen for the Government "of Quebec for the division and adjustment of the debts, credits, liabilities, "properties and assets of Upper Canada and Lower Canada during our royal "pleasure: And whereas the said Charles Dewey Day has tendered his resig- "nation of the said office, which has been accepted by us, and for divers other "good causes us thereunto moving, we have been pleased to determine our "royal will and pleasure in relation to the said letters patent: Now know ye "that we do hereby cancel, revoke and make void the said letters patent, and "do hereby discharge the said Charles Dewey Day from the office of Arbitra- "tor of the Government of Quebec as aforesaid.

"In Testimony whereof we have caused these our Letters to be made "Patent, and the Seal of our Province to be hereunto affixed.

"Witness, our Right Trusty and Well-Beloved the Honourable Sir Narcisse "Fortunat Belleau, Knight, Lieutenant-Governor of our said Province of "Quebec, at our Government House, in our city of Quebec, in our said "Province, this twentieth day of July, one thousand eight hundred and "seventy, and in the thirty-fourth year of our reign.

"By command,

"P. J. O. CHAUVEAU,

"*Secretary.*"

Protest by Quebec against further action.

Thereupon Mr. Irvine rose and protested against further action being taken by the Arbitrators, stating that he considered the Arbitration determined, and that he and Mr. Ritchie would withdraw from all further proceedings.

Demand by Ontario that proceedings should go on.

The Attorney-General of Ontario and Mr. Cameron stated that they considered the Arbitration in full force, and in no way affected by the resignation of the Honourable Charles Dewey Day, or the revocation of his authority, and that they were ready, and demanded that the proceedings should go on.

The Arbitrator chosen by the Dominion thereupon read the judgment of himself and Mr. Macpherson upon the question of the necessity of unanimity raised and argued before them on the 6th day of July, 1870, and which is as follows:—

JUDGMENT UPON THE QUESTION OF "UNANIMITY."

Judgment on the question of "unanimity."

"At our last meeting a question was raised by the Counsel for Quebec, under "instructions from their Government (a copy of the Order in Council having been "transmitted to each of the Arbitrators) which would then have been decided but "for the abrupt withdrawal of Judge Day, and our subsequent immediate adjourn- "ment, namely:—'That it is essential to the validity of any decision to be given "'by the Arbitrators that their judgment should be unanimously concurred in.' It "remains for me now to express the decision of the Arbitrators on that question.

"It is to be regretted that a position of this important character should not "have been taken before it was known that there was a division of opinion be- "tween the Arbitrators; and it may well be assumed that it would hardly have "escaped the attention of so accomplished a jurist as Judge Day, the Arbitrator

" of Quebec, had he deemed it tenable, and in such case that he would, under the Judgment
" circumstances of that decision, undoubtedly have brought it to the notice of his —*Continued*
" co-arbitrators. The learned Judge heard the argument, but left with us no
" expression of his opinion, save that the Arbitration was one of a public nature.
" The views, therefore, now delivered are those of the remaining two Arbitra-
" tors, and consequently of a majority.

" In matters of private reference the law is plain, that unless the terms of
" the submission provide that a majority may rule, all must agree in the award,
" or it would not be binding. The impracticability in private affairs of working
" out an arbitration, if unanimity was essential, led to the adoption in almost
" all cases of submission, of the majority clause, or the alternative provision of
" an umpire. So essential to the successful conducting of an arbitration has this
" become, that in the ordinary form of arbitration bonds, or of rules of reference,
" one of these clauses is almost always found inserted. Without such clause,
" in private arbitration, it is admitted unanimity is requisite. The point now is:
" Does the same rule apply to public references or arbitrations? to which class,
" it is conceded, the present enquiry belongs—the 142nd section of the B. N. A.
" Act, 1867, under which the arbitration is held, containing no such clause.

" Mr. Irvine, the Solicitor-General for Quebec, has properly narrowed the
" question to this point.

" Mr. Ritchie, in his argument for Quebec, cited Caldwell on Arbitration,
" p. 202, to prove that undoubted position as to private arbitrations. In the note
" to that page by the able American editor, who republished the work in the
" United States, we find the following remark :—

" ' There is a wide distinction to be observed between the case of a power
" ' conferred for a public purpose, and an authority of a private nature. In the
" ' latter case, if the authority is conferred on several persons, it must be jointly
" ' exercised, while in the former it may be exercised by a majority.'

" Further on, at page 204, he says, ' that referees appointed under a statute
" ' must all meet and hear the parties, but the decision of the majority will be
" ' binding.' The correctness of these views is sustained by the citation of many
" authorities.

" In the case of Green against Millar, Johnson's New York Rep., p. 38, as
" far back as 1810, it is clearly laid down :—

" ' When an authority is confided to several persons for a private purpose,
" ' all must join in the act ; *aliter* in matters of public concern.' Thompson, J.—
" ' A controversy between these parties was submitted to five arbitrators. The
" ' submission did not provide that a less number than the whole might make an
" ' award. All the arbitrators met and heard the proofs and allegations of the
" ' parties, but four only agreed on the award made. And whether the award be
" ' binding is the question now before the court. No case has been cited by the
" ' counsel where this question has been directly decided. I am, however, satis-
" ' fied that as a submission to arbitrators is a delegation of power *for a mere*
" ' *private purpose*, it is necessary that all the arbitrators should concur in the
" ' award unless it is otherwise provided by the parties. In matters of public
" ' concern a different rule seems to prevail; there the voice of the majority shall
" ' govern.' In the case of Grindly vs. Barker, 1 Bos. and Pul. 236, Eyre C. J.

Judgment —*Continued*

"says —'It is now pretty well established that when a number of persons are "'entrusted with power *not of mere private confidence*, but in some respects of "'a general nature, and all of them are regularly assembled, the majority will "'include the minority, and their act will be the act of the whole.' The same "principle was recognized by the Court of K. B. in the case of King vs. Beaton, "3rd Term Rep. 592. See also Paley on Agency, 3rd Am. Ed, pages 177 8, "Note G.; and Croker vs. Crane, 21 Wendell. 211-18. In *ex parte* Rogers, "7th Vol. Cowen U. S. Rep. 526, and Note A, pages 530 and 535, the whole "position is ably and thoroughly reviewed; and in a long note citing the English "authorities, as well as the American, bearing upon the same point, the distinc- "tion between public and private reference and the duties and powers resulting "therefrom, are clearly shown, and the power of the majority to decide clearly "established. The English cases upon the point are not so direct, but in the reason- "ing of those which have been cited, or can be found, the same principle clearly "manifests itself. In the Courts of the United States, decisions are constantly "found bearing upon circumstances similar to those in our own Dominion. "The varied nature of the business of that country, the different aspects under "which questions arise, from their position as a congregation of States, the daily "development of new conflicts of rights arising from the expanding nature of "their society, raise questions which do not come up in England, but the solution "of which, after all, in the absence of any particular local statutory provisions, "is governed by the law of England. Under these circumstances our Courts are "in the habit of taking these decisions as guides. These then determine that "in matters of Public Arbitration or Reference, though provision to that effect "be not specifically made, the decision of a majority shall be incident to the "reference. The 142nd Sec. of the B. N. A. Act, 1867, must come within this "rule. Were it not so intended, the section would be superfluous because any "one party in a great question of public importance could prevent a decision.

"To work out the reasoning of the Counsel of Quebec to its legitimate "conclusion would place absolute power in the hands of the third or Dominion "Arbitrator. I have supposed that, on points on which Ontario and Quebec "were agreed, it was my duty at once to assent, and that under such circum- "stances, whether I differed or not, was of no consequence; but as the powers "of all the Arbitrators must be co-equal, if unanimity is essential, I might, by "simply disagreeing, prevent an award, even when both Ontario and Quebec, "the parties interested, had agreed upon it. Such a position is untenable. Mr. "Macpherson and myself are, therefore, of opinion that the decision of a "majority must govern.

"J. H. GRAY.

"Montreal, July 21st, 1870."

Arbitrators adjourned.

The Arbitrators then adjourned until the next day at ten o'clock a.m.

TWENTY-SEVENTH MEETING OF ARBITRATORS.

The Arbitrators met on the twenty-second day of July, 1870, at ten o'clock

a. m. Present: the Honourable John Hamilton Gray and the Honourable David Lewis Macpherson—the Honourable Charles Dewey Day not being present. The Attorney-General for Ontario, and Messrs. Cameron and Wood appeared on behalf of Ontario. No one appeared on behalf of Quebec. Present Hon. J. H. Gray and Hon D. L. Macpherson.

Mr. Cameron stated that he wished an adjournment until two o'clock p. m. The Arbitrators adjourned accordingly; and at two o'clock p.m. resumed their sitting, when Mr. Cameron proceeded, on the part of Ontario, to submit to and discuss before the Arbitrators, the respective debts of Ontario and Quebec for local purposes, with the view of bringing the debts in both Provinces within the principle of their decision. After progress made, the Arbitrators adjourned until ten o'clock next day. Discussion on the part of Ontario. Arbitrators adjourned.

TWENTY-EIGHTH MEETING OF ARBITRATORS.

The Arbitrators met at the place of their former meeting on the twenty-third day of July, 1870, at ten o'clock a.m., pursuant to adjournment. Present: the Honourable David Lewis Macpherson and the Honourable John Hamilton Gray—the Honourable Charles Dewey Day not being present. Messrs. Cameron and Wood and the Attorney-General for Ontario, appeared on behalf of Ontario. No one appeared on behalf of Quebec. Present Hon. D. L. Macpherson and Hon. J. H. Gray.

The Arbitrators stated that, after the adjournment last evening, they were severally served with a Summons, or Writ in Prohibition, issued by order of Judge Beaudry out of the Superior Court of the Province of Quebec, which with the papers annexed thereto were read. The Writ appeared to be issued on affidavits severally made by the Honourable George Irvine, Solicitor-General for Quebec, and T. W. Ritchie, Esq., Counsel for Quebec; which affidavits and Writ severally bore date the twenty-second day of July, 1870. The affidavit, made by the said the Honourable George Irvine, was as follows:— Arbitrators announced service on them of Writ of Prohibition.

"Canada.
"Province of Quebec,
"District of Montreal.

"IN THE SUPERIOR COURT.

"The Honourable George Irvine, of the City of Quebec, Her Majesty's "Solicitor-General for the Province of Quebec, being duly sworn, doth depose "and say:— Affidavit of Hon. Geo. Irvine.

"That on the ninth day of July instant, at the City of Montreal, in the "said Province, the Honourable Charles Dewey Day, the Honourable John "Hamilton Gray, and the Honourable David Lewis Macpherson, Arbitrators, "under the provisions of the 142nd Section of the British North America Act, "1867, held a sitting, and that then and there the said the Honourable Charles "Dewey Day, who was the Arbitrator chosen by the Province of Quebec, did, "as this deponent is credibly informed and believes, notify the said other Arbi-"trators that he had resigned his office of Arbitrator, and should no longer act

Affidavit—*Continued.*

"upon the said Arbitration, and thereupon he withdrew from the said sitting "of the said Arbitrators.

"That afterwards, upon the said day, the said the Honourable John Ham- "ilton Gray and the Honourable David Lewis Macpherson, as this deponent is "credibly informed, adjourned to a future day to be named, and thereafter "notified the Government of Quebec that they would meet and proceed with "the said Arbitration at the St. Lawrence Hall in Montreal aforesaid, on the "twenty-first day of July instant.

"That the resignation of the said the Honourable Charles Dewey Day was "duly accepted, and his commission and appointment as such Arbitrator was, "on the twentieth day of July instant, revoked and annulled by the Govern- "ment of Quebec.

"That on the said twenty-first day of July instant, the said Honourable "John Hamilton Gray and the Honourable David Lewis Macpherson met at "Montreal aforesaid, and assumed to proceed with the said Arbitration, and "although they were then and there duly notified that the said the Honourable "Charles Dewey Day had resigned his office as Arbitrator, and that his resignation "had been accepted, and his commission and appointment as such Arbitrator had "been revoked and annulled by the said Government of Quebec, they the said "the Honourable John Hamilton Gray and the Honourable David Lewis Mac- "pherson did sit as Arbitrators upon the said Arbitration, and did proceed with "the same, and did then and there, notwithstanding the said Province of Quebec "protested against any further proceedings being had, render a certain judgment "or decision as Arbitrators, and did declare their intention to go on with the "said Arbitration, and did for that purpose adjourn and continue their said sitting "until the twenty-second day of July instant, at ten o'clock in the forenoon, at "Montreal aforesaid; and further deponent saith not, and hath signed.

"Sworn and acknowledged at Montreal, "twenty-second day of July, before us, "L. J. A. PAPINEAU and J. S. HONEY, P. S. C." } "G. IRVINE."

Affidavit of Mr. Ritchie same as Mr. Irvine's.

The affidavit made by T. W. Ritchie, Counsel for Quebec, was in substance the same as that of the Honourable George Irvine.

Petition annexed to Writ.

Appended to the writ was the petition of the Honourable Gedeon Ouimet, Attorney-General for Quebec, to the Chief Justice and Justices of the Superior Court, setting forth the facts stated in the foregoing affidavits, and praying for a Writ of Prohibition against the Honourable John Hamilton Gray and the Honourable David Lewis Macpherson to restrain them from further proceeding upon the said Arbitration. The Writ of Prohibition commanded the said two Arbitrators to refrain from further proceeding in the said Arbitration, and required them to show cause why they should not so refrain, on Thursday, the first day of September then next.

Arbitrators adjourned, and directed notice of next meeting to be given to Quebec.

The Arbitrators, after reading the foregoing papers, adjourned until Thursday, the fourth day of August then next, to meet at Osgoode Hall, in the City of Toronto, at twelve o'clock noon, to proceed with the said Arbitration, and they directed that due notice of the time and place of such meeting should be given to the Honourable Charles Dewey Day, and to T. W. Ritchie, Esq., the Counsel for Quebec.

NOTE.—On the 7th November, 1871, the Writ of Prohibition was quashed by Mr. Justice Beaudry. Writ of prohibition quashed.

The following is the Judgment :—

PROVINCE OF QUEBEC.
DISTRICT OF MONTREAL.

Superior Court for Lower Canada.

The seventh day of November one thousand eight hundred and seventy-one.

In Chambers.

Coram—The Honourable Mr. JUSTICE BEAUDRY.

No. 1801.

The Honourable GEDEON OUIMET, Attorney-General of our Lady the Queen for the Province of Quebec (heretofore Lower Canada), who prosecutes for our said Sovereign Lady the Queen.....Petitioner.

and

The Honourable JOHN HAMILTON GRAY, now of the City of Ottawa in Ontario, Esquire, and the Honourable DAVID LEWIS MACPHERSON, of the City of Toronto in Ontario aforesaid, Esquire.....Defendants.

The Honourable Gédéon Ouimet, Attorney-General for Lower Canada, on behalf of Her Majesty, and the Defendants, by their Counsel, having been heard before me, one of the Judges of the Superior Court for Lower Canada, on the exception declinatoire fyled by the said Defendants to the Writ of Prohibition issued in this cause. After examination of the proceedings and proof of record, and mature deliberation being had; considering that the said Defendants are not by their commission respectively invested with the powers and jurisdiction of a court, nor could they, under the Imperial Statute intituled, The British North America Act of 1867, be considered as forming a Court, and having the powers and jurisdiction of a Court; and considering that under Article 1031 of the Code of Civil Procedure of Lower Canada, writ of Prohibition can only be addressed to Courts exceeding their jurisdiction: and considering, therefore, that the writ of Prohibition issued in this cause has issued improvidently, I do hereby maintain the said exception declinatoire, and do quash the said writ and proceedings had thereon, and do relieve the said Defendants from further answering the Petition of the said Attorney General.

(Signed) J. U. BEAUDRY.

(True Copy.)
HUBERT, HONEY & GENDRON, P. S. C.

This Judgment was subsequently affirmed on appeal.

TWENTY-NINTH MEETING OF ARBITRATORS.

Present: Hon. J. H. Gray and Hon. D. L. Macpherson. Hon. C. D. Day being absent.

The Arbitrators met at Osgoode Hall, in the City of Toronto, on the fourth day of August, 1870, pursuant to adjournment. Present—The Arbitrators, the Honourable John Hamilton Gray and the Honourable David Lewis Macpherson; the Honourable Charles Dewey Day not being present. Messrs. Cameron and Wood appeared on behalf of Ontario; no one appearing on behalf of Quebec.

Notice to Arbitrator and Counsel for Quebec to meet in Toronto.

Mr. Cameron produced a notice which he stated he had personally posted to the Honourable Charles Dewey Day, to the Honourable George Irvine, Solicitor-General for Quebec, and to T. W. Ritchie, Esq., Counsel for Quebec, which notice is as follows:—

"In the matter of the Arbitration

"Between the Provinces of Quebec and Ontario.

"The undersigned Arbitrators in the above matter, have adjourned until "Thursday, the fourth day of August, 1870, then to meet at Osgoode Hall, "Toronto, at twelve o'clock noon, to proceed with the Arbitration.

"Montreal, twenty-third day of July, 1870.

"D. L. Macpherson,
"J. H. Gray."

Endorsed on the back were these words, "Mailed from Toronto on the twenty-eighth day of July, 1870. J. H. C."

Service of *Quo Warranto* upon Hon. J. H. Gray.

The Honourable John Hamilton Gray reported that after the adjournment at Montreal, on the twenty-third day of July last past, just before leaving Montreal by the evening train, he was served by a Bailiff or Sheriff's Officer, with a Writ of *Quo Warranto*, to show cause by what authority he exercised the office of an Arbitrator—he having (it was said) become a resident of Ontario.

Allegations in support of Writ.

The Petition and affidavits in support thereof alleged *inter alia*—That for more than a year then last past, the said John Hamilton Gray had been and then was a resident in Ontario, to wit, in the City of Ottawa, in the said Province of Ontario; that by reason of the premises and by-law, the said John Hamilton Gray had become, and then was, disqualified to sit or act as Arbitrator in the said matter, or to form one of the said Board of Arbitrators; and that, notwithstanding such disqualification, and notwithstanding that the Province of Quebec had formally objected to his so doing, the said John Hamilton Gray illegally persisted in acting, and did then act, upon the said Board of Arbitrators, which was a public Board, and then, to wit; at Montreal aforesaid, illegally usurped, held and exercised, the said office of Arbitrator in the said matter, which was a public office.

Order for issue of writ.

The order of Mr. Justice Beaudry thereon was as follows:—

"Having seen the Petition of the Honourable Gedeon Ouimet, foregoing, and affidavits, thereto annexed, in support thereof, it is ordered that a writ of Summons *Quo Warranto* do issue as prayed, to summon the said John Hamil-

ton Gray in said Petition named, to appear before one of the Judges of the Superior Court to answer in the premises, at the Court House, in the City of Montreal aforesaid, on the First day of September next, at ten of the clock in the forenoon.

J. M. BEAUDRY.
J. S. C.

"Montreal, 23rd July, 1870."

Jurisdiction of Superior Courts, Quebec, over Arbitrators argued. Arbitrators adjourned.

The Arbitrators waited an hour, and, no one appearing on behalf of Quebec, expressed their desire to the Counsel for Ontario, to hear argument upon the subject of the jurisdiction of the Superior Courts of Quebec by Writ of Prohibition, to restrain them from proceeding with the said Arbitration; whereupon Mr Cameron proceeded to argue the question. After which the Arbitrators adjourned until next day at twelve o'clock noon, to meet at the same place.

Quo Warranto quashed by Mr. Justice Beaudry.

NOTE.—The writ *Quo Warranto* was quashed by Mr. Justice Beaudry on the 20th September, 1872.

The Judgment is as follows:—

PROVINCE OF QUEBEC :
DISTRICT OF MONTREAL. }

Superior Court for Lower Canada.

The Twentieth day of September, eighteen hundred and seventy-two.

Present—Honourable JUDGE BEAUDRY.

No. 1803.

Honourable GEDEON OUIMET, of the City and District of Montreal, Attorney-General for the Province of Quebec, *Pro Regina*. ....Plaintiff,

vs.

Judgment quashing *Quo Warranto*.

The Honourable JOHN HAMILTON GRAY, of the City of Ottawa, in the Province of Ontario ..... Defendant.

After having heard the parties by their Attorneys, examined the proceedings, the documents produced, and the evidence adduced, and having maturely considered the whole: Whereas by the British North America Act (1867) Section 142 it is decreed that "the division and adjustment of the debts "credits liabilities properties and assets of Upper and Lower Canada, shall "be referred to the arbitrament of three Arbitrators, one chosen by the "Government of Ontario, one by the Government of Quebec, and one by the "Government of Canada, and whereas it is further decreed in and by the "same section of the said Act that the Arbitrator chosen by the Government "of Canada shall not be a resident either in Ontario or in Quebec."

Judgment. *Continued.*

WHEREAS the Defendant in this cause was appointed an Arbitrator pursuant to the said section of the above cited Act by the Government of Canada by a Commission under the Great Seal of the Dominion, dated the twenty-third of May, eighteen hundred and sixty-eight, and is therein designated as being of the City of St. John in the Province of New Brunswick.

WHEREAS it is admitted by the said Defendant, that in July eighteen hundred and seventy, before the present action was instituted, he had ceased to have his domicile and place of business in the said Province of New Brunswick, and that before the said month of July eighteen hundred and seventy, he had established his domicile and residence at Ottawa, in the Province of Ontario, where he resided at that time and since the institution of the said action.

WHEREAS, however, there is no evidence that the said Defendant has, since he has established his residence and domicile at Ottawa, as aforesaid, exercised or attempted to exercise the functions of Arbitrator for the purposes of the said section of the British North America Act of 1867, within the limits of the Province of Quebec, as alleged in the information of the Honourable Gédéon Ouimet in the name of Her Majesty in such a manner as to warrant the intervention and control of the Superior Court for Lower Canada or of any of the Judges of the said Court in conformity with article 1016 of the Code of Procedure for Lower Canada.

WE, Judge of the Superior Court, do dismiss the information and action of the Honourable Gédéon Ouimet, and do relieve the Defendant of the said information and demand.

(Signed) J. U. BEAUDRY,
J. C. S.

Judgment affirmed on Appeal.

This Judgment was subsequently affirmed on appeal.

Statement of Mr. Gray as to his alleged disqualification.

THE FOLLOWING IS THE HONOURABLE JOHN HAMILTON GRAY'S STATEMENT OF THIS DATE AS TO HIS ALLEGED DISQUALIFICATION TO ACT AS AN ARBITRATOR.

"I have been all my life a resident of the Province of New Brunswick, and "unless my sojourn at the Capital of the Dominion as after mentioned may con- "stitute an exception, never resided elsewhere.

"In 1867, I was, and for many years previous had been, residing in the "City of St. John, in the Province of New Brunswick; and at the general "election in 1867, was returned a member of the House of Commons for the "City and County of St. John.

"On the twenty-third day of May, 1868, I was chosen by the Government "of Canada as an Arbitrator, under the 142nd section of 'The British North "America Act, 1867,' during my attendance in the Second Session of the First "Parliament of the Dominion of Canada. After the close of the Session I "returned home to my residence in the City of St. John, in New Brunswick, "where I remained with my family until midsummer of the year 1868, when "I was summoned by Sir John A. Macdonald, the Premier of the Government "of the Dominion, to Ottawa, to assume the duties of Arbitrator.

"Understanding the work of the arbitration would consume some two or "three years, I demised my house and premises in St. John for a term of years ; "and in the month of September, 1868, I repaired to Ottawa, taking along with "me my wife and children. I went to Ottawa expressly to discharge my duties "as Arbitrator, but with no intention whatever of becoming a resident either in "Quebec or Ontario.

"Regarding my stay in Ottawa only as temporary, I took lodgings for "myself and family in the Russell Hotel, where I continued for nearly two "years.

"When I arrived in Ottawa in September, 1868 I found the preparatory "accounts, especially those relating to the debt of the late Province of Canada, "were not ready, and in all probability would not be completed for some "time.

"In the mean time I was requested by the head of the Government at "Ottawa, to prepare a report on the assimilation of the laws of Ontario, Nova "Scotia and New Brunswick, a work which I performed.

"Before the Arbitrators commenced their regular sittings, I also spent a "good deal of time in investigating the financial legislation, and the complicated "accounts, of the late Province of Canada, and the relative bearing of these "accounts to the Provinces of Ontario and Quebec ; these accounts running over "a period of nearly twenty-seven years —that is, from the Union in 1841, to Con- "federation in 1867.

"The first regular meeting of the Arbitrators took place on the 31st of "August, 1869, at the City of Ottawa, when the joint actual work of the arbi- "tration really commenced.

"During all this time, I was, as I have already remarked, lodging and board- "ing at a hotel, and refused excellent offers of ready furnished dwelling-houses, "regarding my stay in Ottawa only as temporary, and terminable with the con- "clusion of the arbitration.

"The City of Ottawa is situate on the river Ottawa, and separated from "Quebec only by that river. I should think nearly one-half the population is "what is called 'Lower Canada French.'

"Towards the close of the year 1869, seeing that the arbitration was likely "to take more time than I had anticipated, and my family being tired of hotel "life, I took a house, but it was purely accidental that I selected one in Ontario "instead of in Quebec ; that is, on the South side, instead of the North side, of "the river Ottawa. In the first instance, I had chosen one in Quebec, but the "inconvenience at times in crossing the river, finally determined the choice of a "house on the south side of the river.

"At the time of my appointment, as I have already stated, I was a resident "of St. John. I came to Ottawa, the Capital of the Dominion, to discharge "official duties, temporary in their nature, with no intention or purpose of "becoming a resident in either Quebec or Ontario. I was obliged to be some- "where, and it was manifestly for the convenience of the public and of all "parties concerned as well as of myself, that I should be at the Capital of the "Dominion, lying on the confines of the two Provinces interested in the arbitra-

Mr. Gray's statement—*Continued.*

"tion, and where the public sentiment was as much 'Lower Canadian' as 'Upper "Canadian,' and where access could be had to all necessary papers and docu- "ments, rather than in Montreal or in Toronto.

"If the mere matter of temporary residence during the arbitration is to be "excepted to, it would seem that it would be impossible that the arbitration can "be carried on except at some place out of both Ontario and Quebec.

"I am still occupying the house in Ottawa I took in the latter part of the "year 1869, but my sojourn there is only temporary.

"I have become a resident neither in Quebec nor in Ontario. My real "domicile or residence, according to my view, is now, as it was when I was chosen "Arbitrator, in the City of St. John, in the Province of New Brunswick. I have "not acquired nor do I own any property either in Ontario or in Quebec, except "some household furniture of small value.

"I close this memorandum by remarking that it is somewhat singular, that "Quebec should have attended twenty-three meetings of the Arbitrators with- "out discovering the fact that I have become a resident in Ontario, and that "that fact should only be discovered now that I differ in opinion from the "Honourable Charles Dewey Day, the Arbitrator chosen by Quebec.

"I think I must disregard the exception taken to my residence by Quebec, "and go on and complete the arbitration.

"(Signed) J. H. GRAY.

"Dated, 4th August, 1870."

THIRTIETH MEETING OF ARBITRATORS.

Present: Hon. J. H. Gray and Hon. D. L. Macpherson.

The Arbitrators met on the fifth day of August, 1870. Present: The Honourable John Hamilton Gray and the Honourable David Lewis Macpherson—the Honourable Charles Dewey Day not being present. Messrs Cameron and Wood appeared on behalf of Ontario; no one appearing on behalf of Quebec.

Hon. C. D. Day being absent.

The Arbitrators stated that they were ready to deliver their opinion upon the question of the authority and power of the Superior Courts of Quebec, to restrain them by prohibition from proceeding in the said Arbitration, argued the day before.

OPINION OF THE HONOURABLE DAVID LEWIS MACPHERSON.

Opinion of the Honourable David Lewis Macpherson.

"The two Arbitrators now present meet under circumstances calling for "the most careful circumspection and thoughtfulness.

"The Province of Quebec is not represented before them.

"The Counsel for Ontario calls upon them to proceed with the evidence "and to make their award.

"The retirement of the Arbitrator for Quebec, sanctioned by the Govern- "ment of that Province, was formally communicated to the Arbitrators when "they met at Montreal, on the twenty-first July last, by an official letter from

"the Premier and Secretary, the Honourable Mr. Chauveau, in which he fur- Opinion of the Honourable David Lewis Macpherson.—*Continued.*
"ther preferred the extraordinary request that the remaining Arbitrators 'will
"'be pleased to stay further proceedings until such time as they receive notice
"'as to their intentions from the Government of this Province,'—the Province
"of Quebec.

"A request to stay proceedings until the Government of Quebec should "determine whether they would appoint another Arbitrator, was shortly after- "wards made by the Counsel for that Province, and was, upon consideration, "refused by the Arbitrators; whereupon the Counsel for Quebec declared that "the Province would no longer be a party to the Arbitration, and withdrew.

"Further, each of the two Arbitrators now present was, since the retire- "ment of the Arbitrator for Quebec, served, while in the City of Montreal, "with a writ issued from the Superior Court of the Province of Quebec, the "purport of which is to prohibit them from the further exercise of their func- "tions, until a new Arbitrator should be named for that Province, or to show "cause to the contrary on the first September next.

"The Arbitrators noticed that neither the letter of Mr. Chauveau, nor the "application of the Counsel for Quebec, named any time within which it was "expected such new appointment would be made.

"The retirement of the Quebec Arbitrator took place on the 9th of July, "Mr. Chauveau's letter is dated on the 19th, and on the 22nd the writ was ob- "tained and served. But up to this moment the Arbritrators are not informed "that any new Arbitrator is appointed, nor in fact that it is the intention of the "Government of Quebec to make a new appointment.

"If the Government of Quebec has power under the statute to appoint "another Arbitrator, and if it is their intention to do so, they have had more "than reasonable time for the purpose, since their acceptance of the Honour- "able Charles Dewey Day's resignation. It was the indefinite character of the "delay asked for, which induced the Arbitrators to refuse it. The writ which "was issued and served almost immediately after that refusal is equally indefi- "nite, and might tend to create the impression that delay in completing the "award, and not to obtain a reasonable time to appoint another Arbitrator, was "the object really desired,

"It appears to me, who am unskilled in legal technicalities, taking an "equitable, common-sense view of the question, to be beyond reasonable doubt "that no provincial tribunal has, or can claim, any jurisdiction to examine into "or decide any question referred to arbitration by the 142nd Section of the "British North America Act, 1867, and it may be confidently asserted that the "Imperial Parliament intended the award to be absolutely final. But other "and not unimportant legal questions (even if not really difficult) present them- "selves which, if insisted on, must be determined by some competent tribunal.

"Can one of the Arbitrators, who has undertaken and entered upon the "duties assigned by the Statute, and who is under no mental or physical dis- "ability, retire from, or abandon, these duties before their completion? This "question is not one on which the other Arbitrators can be expected to express "an opinion.

"It is, however, connected with the, perhaps, more strictly legal inquiry:

Opinion of Hon. D. L. Macpherson —*Continued.*

"Does the Act of the Imperial Parliament authorize the withdrawal of an "Arbitrator with or without the concurrence of the party who appointed him? "and does it provide for the substitution of another in his place? Again, are "the Arbitrators, who (though respectively appointed by the Governments of "the Dominion and of the two Provinces) derive all their power and authority "from the Imperial Statute, amenable to any provincial or local tribunal in "matters falling strictly within the scope of their powers and duties?

"The Statute itself does not in terms confer any authority whatever, with "regard to the reference, on any tribunal but the Arbitrators. Can there "then by implication arise a power to delay, which might be so exercised as to "defeat the object of the enactment? The parties interested are the Provinces "of Ontario and Quebec. Can either of them, as a matter of legal or moral "justice, call upon one of its own Courts to interrupt or control the proceedings "of a jurisdiction created for the sole purpose of deciding rights and interests "as between the two Provinces?

"If so, the authority must belong equally to the Courts of either Province, "and what would be the effect of a not impossible conflict between them in "their directions to the Arbitrators or otherwise?

"These, and perhaps other questions, are opened by the events above stated.

"They have been seriously and dispassionately considered, and not the less "that their determination may involve personal responsibilities to an extent "which could not be, and was not, anticipated when the Arbitrators accepted "their appointment. I feel, however, that the first duty of the Arbitrators is "to make a just award; that they are not responsible for the embarrassment "which the present state of things has given rise to, and which adds greatly to "their responsibility, while it increases, if possible, their anxiety to do right.

"By simply performing what they believe to be their duty, if they do any-"thing (while impartially exercising their best judgment) that, may be looked "upon as prejudicial to the interests of Quebec in the voluntary absence of "Counsel for that Province, the just responsibility cannot be charged upon them.

"If in proceeding, they act illegally, their award will not be binding, and "can do no injury. If it should be binding, the loss of the judgment and assist-"ance of an Arbitrator for the Province of Quebec, however much the remain-"ing Arbitrators may regret it, and especially that they are deprived of the "valuable aid of the Arbitrator who has resigned, is not their fault. The with-"drawal was his act, and it has been deliberately adopted by his Government, "who have taken legal steps in one of their own Courts by their Attorney-"General, to stop further proceedings They have thus placed the Arbitrators "in the invidious position of either retracting their refusal to grant indefinite "delay to the Province of Quebec, or of being placed in conflict with one of the "highest tribunals of that Province.

"As a public functionary in the matter, as well as in my private capacity, "I desire to evince in every proper way my profound respect for the Court "whose process has been served on the Arbitrators. But it appears to me they "cannot, without a virtual abdication of their functions as Arbitrators, accept "as a justification for a departure from their previously declared opinion, the "preliminary order of prohibition (which I venture to think will not be finally

"confirmed) of a tribunal of that Province whose Arbitrator's course has unne- Opinion of
"cessarily brought about this complication. I am of opinion that the Arbitra- Hon. D. L.
"tors will best discharge the trust reposed in them by proceeding with the Macpherson
"reference and making, without unnecessary delay, an award which shall divide —*Continued.*
"and adjust the debts, credits, liabilities, assets and properties of Upper and
"Lower Canada.

"As already pointed out, if they have under the circumstances no power
"to make an award, the attempt to make one will create no prejudice to either
"party.

"If they have the power, the duty arising under the Statute from an
"acceptance of their appointment imperatively requires them not by any act of
"theirs to suffer the time occupied and the cost occasioned by the proceedings
"so far taken to be utterly wasted, or to unnecessarily postpone the rendering
"of a final award.

"The Government of the Province of Quebec, and the Arbitrator appointed
"by them have had due notice that the present meeting would be held for the
"purpose of proceeding with business, and that it would be competent for
"the Arbitrators, therefore, to proceed, in accordance with well established
"rules.

"In order, however, to remove any possibility of misapprehension or doubt,
"I think it better, under the peculiar circumstances, that notice should now be
"given to the Province of Quebec and to the Honourable Charles Dewey Day,
"of the intention of the Arbitrators to proceed in accordance with the opinions
"just expressed, and that the Arbitrators should adjourn until Wednesday, the
"17th instant, giving notice to all parties to the reference that on that day they
"will proceed, should the Government of Quebec not think proper to be repre-
"sented or to assign any new or sufficient reason for their absence.

"D. L. MACPHERSON,
"*Arbitrator.*

"Toronto, August 5th, 1870."

OPINION OF THE HONOURABLE JOHN HAMILTON GRAY.

"My colleague, the Arbitrator for Ontario, having expressed a desire to Opinion of
"adjourn for a week or ten days, in order to afford time for a notification to the Honour-
"the Government of Quebec that the Arbitrators would certainly proceed in able John
"the absence of Arbitrator or Counsel on their part, unless at the next meeting Hamilton
"they are represented — I shall most certainly concur. I think we should Gray.
"exhaust every reasonable effort to induce co-operation in this matter: but in
"order to prevent the delay, which is now granted, being in any way attributed
"to a doubt as to the power or intention of the Arbitrators to proceed, it is as
"well to explain with distinctness the views of the Arbitrators on the authority
"or the power of the Courts of any of the Provinces to prohibit or restrain their
"proceedings. With the highest respect for the Courts of Quebec, on any

Opinion of Hon. J. H. Gray—*Continued.*

"matter coming within their jurisdiction, it is plain this Arbitration does not. "It derives its authority from an Imperial Act. The Government and Province "of Quebec, of which those Courts form a constituent part, is simply a party to "the Arbitration; another Province, whose Courts and Government are entirely "independent of and beyond the jurisdiction of the Courts of Quebec, is the "other party; while the Dominion Government simply appoints the third "Arbitrator by the authority of the Imperial Act. These constitute the tri- "bunal. How is it possible that a subordinate part of one of the two Provinces "—because the Courts are only parts of the whole machine of Government— "can control the action of another Province and Government, and of the Arbi- "trator appointed by a third Government, in a matter of submission, to which "the Province (whose Courts assume the authority) only appoints one out "of three co-equal Arbitrators? How can the Courts of Quebec restrain the "Province of Ontario, or the Arbitrator appointed by the Government of that "Province, or the Arbitrator appointed by the Dominion Government, in a "matter in which the whole proceedings may be carried on outside of the Pro- "vince or the territorial jurisdiction to which their process can possibly run? "If so, the Courts of the other Provinces must have equal jurisdiction; and how "absurd would it then be for the Courts of Ontario to come forward and punish "the Arbitrators for not proceeding—for not discharging the duties they had "undertaken!—punished by Quebec for going on!—punished by Ontario for "not going on! Can any construction of the language of the Imperial Statute "sanction such a conflict of jurisdiction? But even if the proceedings were "held within the limits of the territorial jurisdiction of the Courts of one of the "Provinces, the subject matter itself, and the parties proceeding therein, may "be and are, as regards the subject matter, entirely exempt from that jurisdic- "tion. Apart from the common-sense view of such a question, which must "strike every man, the Courts of law in England have left no doubt upon the "point. The highest authorities, both in Chancery and Common Law, have "decided that even where proceedings in arbitration were carried on within the "locality over which the Courts had jurisdiction, and in which their process had "full force, yet the Courts would exercise no jurisdiction to restrain an Arbi- "trator from making his award, unless there was something in the conduct of "*the parties to the reference* which rendered such interference necessary. The "principle being as laid down by Kerr on Injunctions, page 142, that 'there is "'no original jurisdiction of the Court in the nature of a writ of prohibition to "'restrain an Arbitrator from proceeding to make an award.' Mr. Cameron "cited a great many cases in which this position is illustrated and sustained; "among others the King *v.* Bardell and others, 5 A. & E., page 619; Harcourt "*v.* Ramsbottom, 1 Jacob & Walker, Chy. Rep. 504; Pope *v.* Lord Duncannon; "9 Simons Rep. 177; the Newry & Enniskillen Ry. Co. *v.* the Ulster Ry. Co., 8 "De Gex, McN. & G. 486. In Pope *v.* Lord Duncannon, where the plaintiffs had "revoked the authority of their Arbitrator and notified the defendant, and their "Arbitrator had refused to act, but the other Arbitrators had notwithstanding "proceeded and made their award, the Court refused to restrain the defendant "from acting upon the award—the Vice-Chancellor saying: 'As in this case "'there is nothing whatever to show that the power which the plaintiffs had

Opinion of Hon. J. H. Gray—*Continued.*

"'given to the Arbitrator was revoked upon any just or reasonable grounds, I "'am bound to conclude the revocation was a wanton and capricious exercise "'of authority upon their parts, and consequently the motion must be refused.'

"The resignation of the Honourable Charles Dewey Day and the revocation of "his authority by the Quebec Government was no act of Ontario or of the Arbi- "trator appointed by the Dominion, and it is therefore difficult to see why the "Province of Ontario should be prejudiced by that act, or why the Arbitrator "appointed by the Government of Ontario, or the Arbitrator appointed by the "Dominion Government, should not proceed to discharge their duty. In the case "of the King *v.* Bardell (5 Adolphus & Ellis, 619), during the argument, Judge "Patteson says: 'Is there any instance in which the Court has interfered to pre- "'vent an Arbitrator making an award after revocation? The award may be a "'nullity when made, but that is a different point.' Platt replies, 'Search has "'been made for precedents, but none have been found.' Blackstone's Com- "mentaries, vol. 3, edition of 1862, page 117, says: 'A prohibition is a writ "'issuing properly only out of the Court of Queen's Bench, being a prerogative "'one: but for the furtherance of justice it may also now be had in some cases "'out of the Court of Chancery, Common Pleas, or Exchequer, directed to the "'judge and parties of a suit in any inferior court, commanding them to cease "'from the prosecution thereof, upon a suggestion that either the cause origi- "'nally or some collateral matter arising therein, does not belong to that juris- "'diction, but to the cognizance of some other court.' If old Blackstone is "still law,—and the Imperial Act, British North America Act, 1867, is still in "force—no other Court but the Arbitrators' Court can have cognizance of the "Arbitration. But apart from these authorities, on broad constitutional grounds, "the right of the Courts of Quebec to interfere with the proceedings of a tri- "bunal created under authority of an Imperial Statute, acting on a subject "matter exclusively within its own jurisdiction and for which it was created, is "denied. It is greatly to be regretted that there was no counsel—as in the "case of the unanimity question—to argue the other side; but as has been "remarked by my colleague, that is not our fault. If these legal questions are "to be raised on every occasion, it was manifestly of the highest importance "that the Honourable Charles Dewey Day should have remained at his post. "He did not resign—so far as we know—because he differed with his colleagues "in concluding that the decisions of the Arbitrators need not be unanimous. "He assigned no such reason for his resignation, and on that question gave no "decision, and, so far as his colleagues know, expressed no opinion; although "he was present at the argument, and subsequently looked into the authorities "with his colleagues. His resignation, as stated at the time, was on other "grounds; but whether they have his able assistance or not, the remaining "Arbitrators must proceed with the work, and decide on all questions as they "arise according to the best of their judgment.

"J. H. GRAY.

"Toronto, August 5th, 1870."

Order of Arbitrators. Adjournment.

The following Order was then made: "That the Arbitrators do adjourn "until the 17th instant, then to meet at Osgoode Hall, at two p.m., and proceed "peremptorily with the Arbitration; and that notice thereof be served on the "Government and Council of Quebec, and on the Honourable Charles Dewey "Day."

THIRTY-FIRST MEETING OF ARBITRATORS.

Present: Hon. J. H. Gray and Hon. D. L. Macpherson. Hon. C. D. Day being absent. Notice of meeting of Arbitrators to Hon. C. D. Day and Governments of Quebec and Ontario served.

The Arbitrators met on the seventeenth day of August, 1870, at Osgoode Hall, in the city of Toronto, at t[illegible]k p.m., pursuant to adjournment. Present: The Honourable John H[illegible] Gray and the Honourable David Lewis Macpherson,—The Honourable C[illegible]arles Dewey Day not being present. Messrs. Cameron and Wood appeared on behalf of Ontario; no one appearing on behalf of Quebec.

Mr. Cameron produced a notice duly endorsed by himself as having posted copies thereof to the Honourable Charles Dewey Day, the Honourable Mr. Chauveau, Provincial Secretary for Quebec, and T. W. Richie, Esq., Counsel for Quebec, and stated that no answer had been received by him from any of the parties to whom he had so sent copies; said notice being in the words and figures following:—

"In the matter of the Arbitration

"Between the Provinces of Ontario and Quebec.

"The undersigned Arbitrators have adjourned the proceedings of the Arbi- "tration to Wednesday, the seventeenth day of August instant, at two o'clock "p.m., at Osgoode Hall, Toronto; and the Governments of the Provinces of Que- "bec and Ontario are notified that notwithstanding the Writ of Prohibition "served upon the Arbitrators, the undersigned will proceed with the considera- "tion of the matter of the Arbitration on the day and at the place above named, "peremptorily.

"D. L. MACPHERSON,
"J. H. GRAY,
"*Arbitrators.*

"Toronto, 5th August, 1870."

Arbitrators adjourned.

After discussion and progress made, the Arbitrators adjourned until next day at twelve o'clock noon, to meet at the same place.

THIRTY-SECOND MEETING OF ARBITRATORS.

Present: Hon. J. H. Gray and Hon. D. L. Macpherson. Hon.

The Arbitrators met on the eighteenth day of August. Present: The same Arbitrators and parties as at the last preceding meeting.

The Arbitrators stated that they had that morning received a communication from the Under Secretary of State at Ottawa, enclosing a copy of a despatch from the Lieutenant-Governor of Quebec to the Governor-General on the subject

of the proceedings of the Arbitrators, which documents were ordered to be read and entered upon the Minutes of the Proceedings, and are as follows :— C. D. Day being absent Statement of Arbitrators.

" Department of the Secretary of State of Canada.
" Ottawa, 16th August, 1870.

" SIR,—I have the honour by command of the Governor-General to trans- Letter from
" mit to you herewith copy of a protest received by His Excellency from the the Under
" Lieutenant-Governor of the Province of Quebec against the course which you Secretary of
" and the Honourable David Lewis Macpherson have notified the Governor of State for
" that Province that you proposed taking in the matter of the Arbitration the Do-
" between the Provinces of Ontario and Quebec. minion to Hon. J. H. Gray.

" I have the honour to be, Sir,
" Your most obedient servant,
" E. PARENT,
" *Under Secretary.*

" The Honourable J. H. Gray."

A similar letter *mutatis mutandis* was addressed to and received by the Honourable David Lewis Macpherson. Similor letter to Hon. D. L. Macpherson.

The protest by the Lieutenant-Governor referred to is as follows :—

(*Translation.*)

" Government House,
" Quebec, 8th August, 1870.

" SIR,—I have the honour to transmit, for the information of His Excellency Protest by
" the Governor-General, copy of a document signed by the Honourable Messrs. the Lieut.-
" Gray and Macpherson, which has been received by the Secretary of this Governor of
" Province. Quebec.

" I deem it my duty at the same time to call the attention of His Excel-
" lency the Governor-General and of the Federal Government to the unjust and
" illegal course jointly adopted by the Arbitrator appointed by the Federal
" Government and the Arbitrator for the Province of Ontario, and respectfully
" to request, on behalf of the Government of this Province, the intervention of
" the Federal Government.

" I have the honour to be,
" Your most obedient servant,
" N. F. BELLEAU,
" *Lieutenant-Governor of the Province of Quebec.*

" To the Honourable The Secretary of State,
" for the Provinces, Ottawa."

The document referred to in the foregoing despatch, is the notice of the Arbitrators set out *verbatim* in the proceedings of the meeting of the seventeenth day of August, 1870. Notice referred to same as at 31st meet-

ing of Arbitrators. Subject of Arbitration discussed. Arbitrators adjourned.

The Counsel for Ontario then proceeded to discuss the various items forming the subject of reference to the Arbitrators.

The Arbitrators adjourned to Tuesday, the twenty-third day of August, at noon, to meet at the same place.

THIRTY-THIRD MEETING OF ARBITRATORS.

Present: Hon. J. H. Gray and Hon. D. L. Macpherson. Hon. C. D. Day being absent. The Auditor General subpœnaed. Arbitrators adjourned.

The Arbitrators met at the place of their last preceding meeting, on the twenty-third day of August, 1870, at twelve o'clock noon, pursuant to adjournment. Present: The Honourable John Hamilton Gray and the Honourable David Lewis Macpherson—the Honourable Charles Dewey Day not being present. Messrs Cameron and Wood appeared for Ontario. No one appeared on behalf of Quebec.

The Arbitrators stated that they had subpœnaed Mr. Langton, the Auditor-General for the Dominion of Canada, to appear before them and give evidence, and that they were informed he would be in attendance the next day, and that therefore they should adjourn to meet at the same place, on the next day at two o'clock.

THIRTY-FOURTH MEETING OF ARBITRATORS.

Present: Hon. J. H. Gray and Hon. D. L. Macpherson. Hon. C. D. Day being absent Arbitrators adjourned.

The Arbitrators met at the place of their last meeting, on the twenty-fourth day of August, 1870, at two o'clock p. m., pursuant to adjournment. Present: The Honourable John Hamilton Gray and the Honourable David Lewis Macpherson—the Honourable Charles Dewey Day not being present. Messrs. Cameron and Wood appeared on behalf of Ontario. No one appearing on behalf of Quebec.

The Auditor-General not having arrived, the Arbitrators adjourned until the next day, the twenty-fifth day of August, to meet at the same place, at two o'clock, p. m.

THIRTY-FIFTH MEETING OF ARBITRATORS.

Present: Same as at last meeting Auditor-General present. Arbitrators adjourned.

The Arbitrators met at the time and place last aforesaid, on the twenty-fifth day of August, 1870. Present: The same as at last preceding meeting.

Mr. Langton, the Auditor-General having arrived, and being present, Mr. Wood, on behalf of Ontario, proceeded with his case and arguments.

The Arbitrators adjourned to meet the next day at the same place, at twelve o'clock, noon.

THIRTY-SIXTH MEETING OF ARBITRATORS.

Present: Same as at last meeting

The Arbitrators met at the time and place aforesaid, on the twenty-sixth day of August, 1870. Present: The same as at the last preceding meeting.

Mr. Wood resumed his argument, and continued until six o'clock p.m., when the Arbitrators adjourned to meet the next day at half-past one p.m. Argument resumed. Arbitrators adjourned.

THIRTY-SEVENTH MEETING OF ARBITRATORS.

The Arbitrators met on the twenty-seventh day of August, 1870. Present : Mr. Langton. Present: Same as at last meeting

Mr. Wood resumed his argument and closed it. Argument closed.

THIRTY-EIGHTH MEETING OF ARBITRATORS.

Monday, 29th August, 1870.

Arbitrators met for consultation. Adjourned to (next day) to-morrow. Present: The same Arbitrators; Hon. C. D. Day being absent.

Tuesday, 30th August, 1870.

Arbitrators met for consultation. Adjourned until (next day) to-morrow.

Thursday, 1st September, 1870.

Arbitrators met for consultation. Agreed upon the substance of the Award, and initiated the draft of the terms thereof. Adjourned until (next day) to-morrow.

Friday, September 2nd, 1870.

Arbitrators met. Discussed the form of the Award. Adjourned until (next day) to-morrow.

Saturday, September 3rd, 1870.

Arbitrators met. Re-examined the award, and finally completed and executed the same, in the presence of Christopher Robinson, Esq., of Toronto, Barrister-at-Law, and Mr. Frederick Finch, of the same place, Law Stationer. The same having been executed by a majority only, viz. : by the Honourable J. H. Gray, and the Honourable D. L. Macpherson ;—the Honourable Charles Dewey Day not being present, or having attended the meetings of the Arbitrators since his withdrawal in July last (1870), which Award is as follows :— Award made.

AWARD.

Award.

" To all to whom these Presents shall come—

" The Honourable John Hamilton Gray, of the City of St. John, in the " Province of New Brunswick, and the Honourable David Lewis " Macpherson, of the City of Toronto, in the Province of Ontario, " Send Greeting :

" Whereas by the British North America Act, 1867, it is enacted that the " division and adjustment of the debts, credits, liabilities, properties and assets

Award—*Continued.*

"of Upper Canada and Lower Canada, shall be referred to the arbitrament of "three Arbitrators, one chosen by the Government of Ontario, and one by the "Government of Quebec, and one by the Government of Canada.

"And whereas, the said John Hamilton Gray was duly chosen under and "in accordance with the provisions of the said Act, as Arbitrator, by the Govern- "ment of Canada, the said David Lewis Macpherson, by the Government of "Ontario, and the Honourable Charles Dewey Day, of Glenbrooke. in the said "Province of Quebec, by the Government of Quebec;

"Now therefore, the said Arbitrators having taken upon themselves the "burden of the said Arbitration, the said John Hamilton Gray and David Lewis "Macpherson being a majority of the said Arbitrators do award, order and "adjudge of and upon the premises as follows, that is to say:—

"I. That the amount by which the debt of the late Province of Canada "exceeded, on the thirtieth day of June, one thousand eight hundred and sixty- "seven, sixty-two millions five hundred thousand dollars, ($62,500,000) shall be "and is hereby divided between and apportioned to, and shall be borne by the "said Provinces of Ontario and Quebec respectively, in the following proportions, "that is to say,—the said Province of Ontario shall assume and pay such a pro- "portion of the said amount, as the sum of nine millions eight hundred and "eight thousand seven hundred and twenty-eight dollars and two cents, "($9,808,728 02) bears to the sum of eighteen million five hundred and eighty- "seven thousand five hundred and twenty dollars and fifty-seven cents, "($18,587,520 57); and the said Province of Quebec shall assume and pay such "a proportion of the said amount, as the sum of eight millions seven hundred "and seventy-eight thousand seven hundred and ninety-two dollars and fifty-five "cents, ($8,778,792 55) bears to the sum of eighteen millions five hundred and "eighty-seven thousand five hundred and twenty dollars and fifty-seven cents "($18,587,520 57).

"II. That the assets hereinafter in this cause enumerated shall be, and the "same are hereby declared to be the property of and belonging to the Province "of Ontario, namely:

"1. Debt from the Upper Canada Building Fund to the late "Province of Canada, (enumerated in the Fourth Sche- "dule to the said British North America Act, 1867, as "Upper Canada Building Fund, Lunatic Asylums, "'Normal Schools,')—Lunatic Asylums $30,800, Nor- "mal Schools $6,000	$36,800 00
"2. Debt from the Law Society, Upper Canada, to the late "Province of Canada.....	156,015 61
"3. Debts to the late Province of Canada under the Consoli- "dated Municipal Loan Fund of Upper Canada.....	6,792,136 39
"4. Debt from the Agricultural Society, Upper Canada, to "the late Province of Canada.....	4,000 00
"5. Debt from the University Permanent Fund to the late "Province of Canada	1,220 63

"III. That the assets hereinafter in this clause enumerated shall be, and "the same are hereby declared to be the property of, and to belong to the Pro- "vince of Quebec, namely: Award— *Continued.*

"1. The debt from the Aylmer Court House to "the late Province of Canada for six per cent. "Provincial debentures issued on account of "the said Court House and assumed by the "Dominion of Canada, and charged in the "debt of the late Province of Canada.....	$2,000 00	
"And for certain charges paid by the said "late Province of Canada in respect of the "said Court House	1,239 70	
		3,239 70
"2. Debt from the Montreal Court House to the "late Province of Canada for six per cent. "Provincial debentures issued on account of "the said Court House and assumed by the "Dominion of Canada, and charged in the "debt of the late Province of Canada.....	95,600 00	
"For advances made to the said Court House "by the said late Province of Canada	18,996 21	
		114,596 21
"3. Debt from the Kamouraska Court House to the late Pro- "vince of Canada for balance of certain charges in respect "of the said Court House paid by the late Province of "Canada		201 27
"4. Debt from the Royal Institution, otherwise the McGill "College, to the late Province of Canada, of the balance "of a loan made by the said late Province to that Insti- "tution.....		7,790 00
"5. Debt under the Consolidated Municipal Loan Fund of "Lower Canada to the late Province of Canada.....		2,939,429 97
"6. Advances made in excess of the Legislative School Grant "(described in the Fourth Schedule to the said British "North America Act, 1867, as 'Lower Canada Legisla- "tive Grant').....		28,494 73
"7. Debt to the late Province of Canada under the Quebec "Fire Loan.....		264,254 65
"8. Debt to the late Province of Canada for advances made "to or on account of certain municipalities in the county "of Temiscouata, (described in the said Fourth Schedule "as 'Temiscouata Advance Account.')		3,000 00
"9. Debt from the Education Office in Lower Canada, to the "late Province of Canada for the balance unpaid of a de- "falcation in the said office to the said late Province (de- "scribed in the said Fourth Schedule as 'Education East')		290 10

Award—*Continued.*

"10. Debt from the Building and Jury Fund, Lower Canada, "to the late Province of Canada for loans and advances "made to it by the said late Province of Canada 116,475 51

"11. Debt from the Municipalities Fund of Lower Canada to "the late Province of Canada, for advances made to or "on the credit of that fund (described in the said Fourth "Schedule as 'Municipalities Fund.')..... 484,244 33

"12. Debt from the Lower Canada Superior Education Income "Fund to the late Province of Canada, for advances made "from time to time by the said late Province..... 234,281 46

"13. Montreal Turnpike Trust..... 188,000 00

"IV. And as to the said Montreal Turnpike Trust, the said Arbitrators "further find, award and adjudge as follows :—

"Whereas the said sum of one hundred and eighty-eight thousand dollars "($188,000) is secured by debentures issued upon the credit of the said Trust, "and guaranteed by the late Province of Canada, and the said Trust has "hitherto met the payments upon such debentures, and the payment thereof "has therefore not been assumed by the Dominion of Canada, nor has the "said sum of one hundred and eighty-eight thousand dollars ($188,000) been "charged by the said Dominion in the debt of the late Province of Canada, "which charge, if made, would increase by one hundred and eighty-eight "thousand dollars ($188,000) the excess of the said debt on the thirtieth day "of June, one thousand eight hundred and sixty-seven, above sixty-two "millions five hundred thousand dollars ($62,500,000); Know therefore, "the said Arbitrators having assigned the said Trust as an asset of the "said Province of Quebec, do hereby adjudge and award that the said Province "of Quebec shall hereafter indemnify, protect, and save harmless the said Do- "minion and the said Province of Ontario, against any charge upon, or payment "by the said Dominion in respect of the said debentures, or the said guarantee "or in respect in any way of the said Trust.

"V. That the following Special, or Trust Funds, and the moneys thereby, "payable, including the several investments in respect of the same or any of "them are, shall be, and the same are hereby declared to be the property of "and to belong to the Province of Ontario, for the purposes for which they "were established, namely :—

"1. Upper Canada Grammar School Fund.
"2. Upper Canada Building Fund.
"3. Upper Canada Municipalities Fund.
"4. Widows' pensions and uncommuted stipends, Upper Canada, subject "to the payment of all legal charges thereon.
"5. Upper Canada Grammar School Income Fund.
"6. Upper Canada Improvement Fund.
"7. Balance of special appropriations in Upper Canada.
"8. Surveys ordered in Upper Canada, before 30th June, 1867.
"9. Amount paid and payable by Upper Canada to the Canada Land and "Emigration Company.

"VI. That the following Special, or Trust Funds and the moneys thereby Award—
"payable, including the several investments in respect of the same or any of *Continued.*
"them are, shall be, and the same are hereby declared to be the property of,
"and to belong to, the Province of Quebec for the purposes for which they were
"established, namely:—

"1. Lower Canada Superior Education Fund.
"2. Lower Canada Superannuated Teacher's Fund.
"3. Lower Canada Normal School Building Fund.
"4. Widows' pensions and uncommuted stipends, Lower Canada, subject
"to all legal charges thereon.
"5. Balance of special appropriations in Lower Canada.
"6. Surveys ordered in Lower Canada before 30th June, 1867.

"VII. That from the Common School Fund, as held, on the thirtieth day of
"June, one thousand eight hundred and sixty-seven, by the Dominion of Canada,
"amounting to one million seven hundred and thirty-three thousand two hun-
"dred and twenty-four dollars and forty-seven cents ($1,733,224 47), (of which
"fifty-eight thousand dollars ($58,000) is invested in the bonds or debentures of
" the Quebec Turnpike Trust, the said sum of fifty-eight thousand dollars being
"an asset mentioned in the fourth Schedule to the British North America Act,
"1867, as the Quebec Turnpike Trust), the sum of one hundred and twenty-
"four thousand six hundred and eighty-five dollars and eighteen cents ($124,-
"685 18) shall be, and the same is hereby taken and deducted and placed to
"the credit of the Upper Canada Improvement Fund, the said sum of one
"hundred and twenty-four thousand six hundred and eighty-five dollars and
"eighteen cents, ($124,685 18) being one-fourth part of moneys received by
"the late Province of Canada, between the sixth day of March, one thousand
"eight hundred and sixty-one, and the first day of July, one thousand eight
"hundred and sixty-seven, on account of Common School lands sold between
"the fourteenth day of June, one thousand eight hundred and fifty-three, and
"the said sixth day of March, one thousand eight hundred and sixty-one.

"VIII. That the residue of the said Common School Fund, with the in-
"vestments belonging thereto, as aforesaid, shall continue to be held by the
"Dominion of Canada, and the income realized therefrom, from the thirtieth
"day of June, one thousand eight hundred and sixty-seven, and which shall be
"hereafter realized therefrom, shall be apportioned between and paid over to
"the respective Provinces of Ontario and Quebec, as directed by the fifth sec-
"tion chapter twenty-six of the Consolidated Statutes of Canada, with regard
"to the sum of two hundred thousand dollars ($200,000) in the said section
"mentioned.

"IX. That the moneys received by the said Province of Ontario since the
"thirtieth day of June, one thousand eight hundred and sixty-seven, or which
"shall hereafter be received by the said Province from, or on account of, the
"Common School lands set apart in aid of the Common Schools of the late
"Province of Canada shall be paid to the Dominion of Canada to be invested
"as provided by section three of said chapter twenty-six of the Consolidated
"Statutes of Canada, and the income derived therefrom shall be divided, appor-
"tioned, and paid between and to the said Provinces of Ontario and Quebec

Award—*Continued.*

"respectively as provided in the said fifth section, chapter twenty-six of the "Consolidated Statutes of Canada with regard to the sum of two hundred "thousand dollars ($200,000) in the said section mentioned.

"X. That the Province of Ontario shall be entitled to retain out of such "moneys six per cent., for the sale and management of the said lands, and that "one-fourth of the proceeds of the said lands, sold between the fourteenth day "of June, one thousand eight hundred and fifty-three, and the said sixth day "of March, one thousand eight hundred and sixty-one, received since the thir-"tieth day of June, one thousand eight hundred and sixty-seven, or which may "hereafter be received after deducting the expenses of such management as "aforesaid shall be taken and retained by the said Province of Ontario for the "Upper Canada Improvement Fund.

"XI. The "Crown Lands Suspense Account," amounting to one hundred "and twelve thousand seven hundred and forty-eight dollars and sixty-three "cents, ($112,748 63) and the Crown Lands Department, amounting to two "hundred and fifty-three thousand and eighty-nine dollars and seventy-six "cents, ($253,089 76) being the items so described in the Public Accounts of "the late Province of Canada, having been omitted respectively from the state-"ment of the debt of the said Province in such accounts, and from the assets "in the Fourth Schedule to the British North America Act, 1867, the said "Arbitrators award and adjudge that the said Province of Ontario shall satisfy "all claims, and receive all moneys in respect of the said Crown Lands Suspense "Account and the said Crown Lands Department connected with or arising "from lands situate in the said Province of Ontario, and that the said Province "of Quebec shall satisfy all claims and receive all moneys in respect of the said "Crown Lands Suspense Account and the said Crown Lands Department "connected with or arising from lands situate in the said Province of Quebec.

"XII. As to the Montreal harbour the said Arbitrators find that the debt "due on account of four hundred and eighty-one thousand four hundred and "twenty-five dollars and twenty-seven cents ($481,425 27)secured by debentures "issued by the Montreal Harbour Commissioners has not been charged in the "statement of the debt of the late Province of Canada. And they award, "direct and adjudge that should the Dominion of Canada hereafter pay any-"thing by reason of the liability of the said Dominion on account of the said "debentures, the said two Provinces shall repay to the said Dominion any "sum so paid in the same proportions respectively, as the said Provinces are "hereinbefore directed to bear and pay the excess on the thirtieth day of June, "one thousand eight hundred and sixty-seven, above sixty two millions five "hundred thousand dollars ($62,500,000) of the debt of the late Province of "Canada.

"XIII. That all the lands in either of the said Provinces of Ontario and "Quebec respectively, surrendered by the Indians in consideration of annuities "to them granted, which said annuities are included in the debt of the late "Province of Canada, shall be the absolute property of the Province in which "the said lands are respectively situate, free from any further claim upon, or "charge to the said Province in which they are so situate, by the other of the "said Provinces.

"XIV. As to all the personal property being the joint property of the said Award—
"Provinces of Ontario and Quebec, not hereinbefore specially mentioned, or *Continued.*
"dealt with, and not appropriated by the said British North America Act, 1867,
"including the library of Parliament at Ottawa, the Arbitrators find that it is
"not expedient to divide the said properties, or to divert them from the public
"purposes for which they are used and required by the Dominion of Canada.
"They, therefore, find and award that the value of the said properties is and
"shall be taken to be two hundred thousand dollars ($200,000), and that the
"Dominion of Canada may retain and acquire the same properties on payment
"to the said Provinces of the said sum of two hundred thousand dollars
"($200,000) in the same proportion as is mentioned in the first paragraph
"hereof in respect to the excess of debt of the late Province of Canada on
"the thirtieth day of June, one thousand eight hundred and sixty-seven, above
"sixty-two millions five hundred thousand dollars ($62,500,000), that is to say,
"to Ontario the sum of one hundred and five thousand five hundred and forty-
"one dollars ($105,541), and to Quebec the sum of ninety-four thousand four
"hundred and fifty nine dollars ($94,459), and upon such payment the Dominion
"of Canada shall become the absolute owner of the said properties. But should
"the Dominion of Canada not so acquire the said properties within two years
"from the date of this award, the Province of Quebec may acquire the said pro-
"perties by the payment to the Province of Ontario, within three months from
"the expiration of the said two years, of the sum of one hundred and five
"thousand five hundred and forty one dollars ($105,541), and should the Pro-
"vince of Quebec not so acquire the said properties within the time aforesaid,
"the Province of Ontario shall, within three months next thereafter, pay to the
"Province of Quebec the sum of ninety-four thousand four hundred and fifty
"nine dollars, ($94,459), and shall thereupon become the absolute owner of
"such properties.

"XV. That the said several sums awarded to be paid, and the several mat-
"ters and things awarded and directed to be done by or with regard to the
"parties to this reference respectively as aforesaid, shall respectively be paid,
"received, done, accepted and taken as and for full satisfaction and discharge,
"and as a final end and determination of the several matters aforesaid.

"In witness whereof, the said John Hamilton Gray and David Lewis Mac-
"pherson, two of the said Arbitrators, have hereunto set their hands this third
"day of September, in the year of our Lord one thousand eight hundred and
"seventy.

"J. H. GRAY.
"D. L. MACPHERSON.

"Signed and published the third day of September, 1870,
"in the presence of:

"Christopher Robinson, of the City of Toronto, Barrister-at-Law;
"Frederick Finch, of the City of Toronto, Law Stationer."

Joint Address of Legislative Council and Assembly of Quebec.

The following is a Joint Address presented by the Legislative Council and Legislative Assembly of the Province of Quebec to His Excellency the Governor-General.

To His Excellency the Right Honourable John, Baron Lisgar of Lisgar and Ballieborough, in the County of Cavan, Ireland, in the Peerage of the United Kingdom of Great Britain and Ireland, One of Her Majesty's Most Honourable Privy Council, Knight Grand Cross of the Most Honourable Military Order of the Bath, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor General of Canada, and Governor and Commander-in-Chief of the Island of Prince Edward, &c., &c., &c.

May it please Your Excellency:

We, Her Majesty's dutiful and loyal subjects, the Legislative Council and Legislative Assembly of the Province of Quebec, in Provincial Legislature assembled, humbly approach Your Excellency for the purpose of representing:—

That, according to the provisions of the One hundred and forty-second Section of the British North America Act, 1867, the division and adjustment of the debts, credits, liabilities, properties, and assets of Upper and Lower Canada should have been referred to the arbitrament of three Arbitrators, one chosen by the Government of Ontario, one by the Government of Quebec, and the third by the Government of Canada, the last-mentioned not to be a resident either in Ontario or in Quebec.

That the Honourable Charles Dewey Day having been appointed Arbitrator by the Province of Quebec, the Honourable David Lewis Macpherson by the Province of Ontario, and the Honourable John Hamilton Gray by the Government of Canada, and the last named Arbitrator having taken up his residence in Ottawa, the Government of the Province of Quebec have deemed it incumbent upon them to protest against his continuing in office, and to express both to the Government of Canada and to the Arbitrators themselves, their firm conviction that to carry out the true intent and meaning of the British North America Act, the decision of the Arbitrators should be unanimous.

That subsequently, on the ninth day of July last, the Honourable Charles Dewey Day, the Arbitrator appointed by the Province of Quebec, differing in opinion with the other Arbitrators respecting a preliminary judgment, which appeared to him based upon pretensions at once unfounded in fact and in law, and deeming that, by the rendering of that judgment, the examination of the question would be restricted by the inflexible rule of an erroneous judgment, and that it would be, therefore, impossible to arrive at any equitable and satisfactory conclusion, felt it to be his duty to resign his office.

That such resignation having been accepted by the Government of the Province of Quebec, notice thereof was immediately given, to wit, on the eleventh day of July last, to the Government of Canada, and to Messrs. Gray and Macpherson; the Government of the Province of Quebec, at the same time, pro-

testing against any ulterior action on the part of the Arbitration Commission, which was thus rendered incomplete. Address—*Continued.*

That, notwithstanding the representations so made to them, Messrs. Gray and Macpherson entered upon the examination of the questions submitted by the two Provinces, without the Province of Quebec being in any way represented, and on the third day of September last, rendered a pretended award, against which His Excellency the Lieutenant-Governor of the Province of Quebec, by despatch, dated the thirteenth day of September last, and addressed to His Excellency the Governor-General, protested as unjust and illegal.

That the injustice of the said pretended award is evident, from the same having been rendered wholly in the interest of the Province of Ontario, and from the fact that, while Messrs. Gray and Macpherson refused to take into consideration the relative financial positions of the two Provinces at the time of the Union, they have taken into consideration the object and nature of certain items of expenditure as having been incurred in one or the other section of the Province of Canada from the period of the Union to Confederation: that the said pretended award is further unjust, inasmuch as the division of the credits, properties, and assets of the late Province of Canada, does not even proceed upon the same basis and principles as those which appear to have been adopted in relation to the division of the balance of the debt, and does not rest upon any principle whatsoever, but is purely arbitrary, and favours the Province of Ontario at the expense of the Province of Quebec; that, lastly, the provisions of the said pretended award fully justify the apprehensions of the distinguished lawyer selected by this Province as its Arbitrator, and the firm and independent line of conduct which he adopted in the interests of justice.

That the said pretended award is absolutely illegal, null, and void, for the reasons hereinbefore set forth, and also as having been rendered by two Arbitrators, who, by the resignation of their colleague, remained without any power or jurisdiction, and that, therefore, the intentions of the British North America Act have not been carried out, and no valid title has been conferred upon either Province in relation to the credits, properties, and assets, which it was the duty of the said Arbitrators to apportion and divide between the two Provinces.

That the Province of Quebec can neither submit to its property being disposed of, or to any sum whatever being exacted from it; nor can it accept any property, credits, or assets in virtue of the said pretended award, and that it is bound to resist, and will resist by all means within its power, the execution of the said pretended award, claiming as it does that justice be done, and that its rights, as recognized by the British North America Act, be maintained.

Wherefore, we humbly pray that Your Excellency will be pleased to adopt such measures as are best calculated to insure justice to this Province.

C. B. DE BOUCHERVILLE,
Speaker of the Legislative Council.

J. G. BLANCHET,
Speaker of the Legislative Assembly.

Statement by Ontario in respect of objections raised in Address.

NOTE.—Ontario disputes the various grounds of objection which, in the above documents, the Executive Council and the Legislative Assembly of Quebec made to the award, both those objections relating to the merits and all others; Ontario affirming that the award was made in good faith by two gentlemen of honour, experience and ability, that the award was not unjust to Quebec; that it was not made in the interest of Ontario, or to the prejudice of Quebec; and that in fact it is much less favourable to Ontario than Ontario justly demanded before the Arbitrators.

Order of His Excellency the Governor-General-in-Council, dated 27th February, 1871.

The following is a copy of an order passed by His Excellency the Governor-General in Council:

COPY OF A REPORT OF A COMMITTEE of the Honourable the Privy Council, approved by His Excellency the Governor-General in Council on the 27th February, 1871.

The Committee of Council have had under consideration the annexed Memorandum, dated 25th February, 1871, from the Honourable the Minister of Justice, to whom was referred the matter of the Arbitration under "the British North America Act, 1867," between the Provinces of Ontario and Quebec, and they respectfully report their concurrence in the opinion expressed in the said Memorandum, and advise that the same be adopted and communicated to the respective Provinces of Ontario and Quebec.

Certified.

W. H. LEE,
Clerk, Privy Council.

To the Honourable
The Secretary of State for the Provinces.

Memorandum by the Honourable Minister of Justice of Canada.

In the matter of the Arbitration under "The British North America Act, 1867," between the Province of Ontario and Quebec, referred to the undersigned, he has the honour to report—,

That under the 142nd Section of the said Act, the following Arbitrators were appointed, viz.:—

The Hon. David Lewis Macpherson, by the Government of Ontario,
The Hon. Charles Dewey Day, by the Government of Quebec, and
The Hon. John Hamilton Gray, of St. John, New Brunswick, by the Government of Canada (his appointment dating from 21st March, 1868).

That by a Despatch from the Lieutenant-Governor of Quebec to the Secretary of State for the Provinces, bearing date the 11th July last, an Order of the Executive Council of that Province was transmitted for the consideration of His Excellency the Governor-General, which Order in Council sets forth, that "Whereas the Hon. J. H. Gray has resided for more than one year, and has become a resident in the Province of Ontario, and has become thereby disquali-

fied to act as such Arbitrator, it has become the duty of this Province to object to the said Hon. John Hamilton Gray acting as such Arbitrator."

Memorandum of Minister of Justice.—*Continued.*

That by a Despatch of the same date, the Lieutenant-Governor transmitted two letters, dated 9th July from the Hon. Charles Dewey Day, addressed to the Provincial Secretary of Quebec, resigning his appointment as Arbitrator under the Section above cited.

That by a subsequent Despatch of the 19th July, the Lieutenant-Governor submitted a copy of an Order of his Council, accepting the resignation of Mr. Day, as the Arbitrator named for the Province of Quebec

That by a letter, dated the 5th of September, Messrs. Gray and Macpherson, the other two Arbitrators transmitted a copy of the award made by them under the said Act, stated that such award had been made in triplicate and sent also to the Governments of Ontario and Quebec.

That the award is signed only by Messrs. Gray and Macpherson, and after reciting that the three Arbitrators were appointed by the several Governments as above-mentioned, proceeds to state that "the said Arbitrators having taken upon themselves the burthen of the said Arbitration," the said John Hamilton Gray and David Lewis Macpherson, being a majority of the said Arbitrators, do hereby award, order, and adjudge of and upon the premises, as follows, that is to say, &c., &c., &c.

That by a Despatch from the Lieutenant-Governor of Quebec, dated the 14th September, a copy of an Order of the Executive Council of Quebec was transmitted, protesting, for the reasons therein given, against any force or validity being given to the pretended judgment or award of the said two Arbitrators by the Federal Authority, and advising of the intention of the Government "to appeal for redress and justice in every constitutional mode which it is the privilege of British subjects under the British Crown to exercise when suffering under injustice or wrong from the hands of any."

That by a subsequent Despatch, dated 22nd December last, from the Lieutenant-Governor, he transmitted an Address from the Legislative Council and Legislative Assembly of the Province of Quebec to His Excellency the Governor-General, setting out—That the Hon. J. H. Gray having taken up his residence at Ottawa, the Government of Quebec having deemed it incumbent to protest against his continuing in office, and to express their conviction that the decision of the Arbitrators should be unanimous; that the Arbitrator appointed by the Province of Quebec resigned his office, that such resignation was accepted, and that the Government of Quebec at the same time protested against any ulterior action on the part of the Commission which was thus rendered incomplete. That Messrs. Gray and Macpherson, notwithstanding such representation, entered upon the examination of the Questions submitted by the two Provinces, without the Province of Quebec being in any way represented, and made their award, against which the Lieutenant-Governor of Quebec protested as unjust and illegal. That the injustice of the pretended award is evident from the facts stated in the Address. That the pretended award is absolutely illegal, null and void, for the reasons therein set forth, and as having been rendered by two Arbitrators, who, by the resignation of their colleague, remained without

Memorandum of Minister of Justice.—*Continued.*

power or jurisdiction. That, therefore, the intention of "The British North America Act" had not been carried out, and no title has been conferred upon either Province in relation to the credits, properties and assets, which it was the duty of the said Arbitrators to apportion and divide between the two Provinces. That the Province of Quebec can neither submit to its property being disposed of, or to any sum whatever being exacted from, nor can it accept any property, credits or assets in virtue of the pretended award, and will resist by all the means within its power the execution of the said pretended award; claiming as it does, that justice be done, and that its rights, as represented by the British North America Act be maintained. They, therefore, pray that His Excellency the Governor-General will be pleased to adopt such measures as are best calculated to ensure justice to that Province.

The case now stands thus:—

The Government of Ontario maintains the validity of the award—The Government of Quebec contends that it is altogether illegal and void, and declares its intention of appealing for redress and justice in every constitutional mode, and the Legislature of Quebec, also protesting against its validity, asks the Governor-General to adopt measures to protect the rights of that Province.

Now the Government of Canada has no power or means of intervening between the parties, of enforcing the award as valid, or setting it aside as invalid, or of granting the redress, or the measure of protection sought for by the Legislature of Quebec. It is for the Government of Ontario, if it desires to enforce the award, to take such steps as it may be advised that the law allows for that purpose, and it is for the Province of Quebec to take the necessary legal steps to resist any action on the part of that of Ontario.

If the question of the validity of the award becomes a matter of litigation either Province will have the power of carrying it by appeal from the decision of any inferior tribunal to the Judicial Committee of the Privy Council as the Court of last resort.

If the Governments of the two Provinces were to agree on a statement or special case, with the view of submitting the question of the validity of the award to the Judicial Committee, it would be the duty of His Excellency the Governor-General, on being prayed so to do, to transmit such special case to the Secretary of State for the Colonies, with a request that it shall be submitted to such Judicial Committee for their opinion, under the 4th clause of the Imperial Act, 3 and 4 William IV., chapter 41.

If the two Governments do not agree upon a joint submission of the case, it will be in the power of either Government to pray Her Majesty to refer the case, as stated by it, for the opinion of the Judicial Committee.

As it is obvious that if the Governor in Council were to assume to decide the questions in dispute, the Province against whom such decision would be given would not accept or submit to it, and as such decision would have no legal force whatever, the undersigned recommends that no expression of opinion be given by His Excellency in Council, and for the same reasons the undersigned refrains from making any report on the legal questions.

Under present circumstances, and until the questions raised respecting the award are settled by judicial decision, the undersigned is of opinion that no action with respect to it can properly be taken by the Governor in Council.

JOHN A. MACDONALD.

Memorandum of Minister of Justice.—*Continued.*

The following are copies of despatches transmitting copies of the above Order to the Lieutenant-Governors of Quebec and Ontario.

Despatches transmitting order to Lieutenant-Governors of Ontario and Quebec.

(*Translation.*)

118 Department of the Secretary of State for the Provinces,
Ottawa, 28th February, 1871.

No. 624.

SIR,—I have the honour to transmit to you, herewith, for the information of your Government, a Copy of an Order of His Excellency the Governor-General in Council, together with a Copy of the Memorandum therein referred to, of the Minister of Justice on the subject of the Arbitration, under the British North America Act, 1867, between the Provinces of Ontario and Quebec.

I have, &c.,

JOSEPH HOWE,
Secretary of State for the Provinces.

The Honourable Sir N. F. Belleau,
Lieutenant-Governor, Quebec.

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119 Office of the Secretary of State for the Provinces,
Ottawa, 28th February, 1871.

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I have, &c.,

JOSEPH HOWE,
Secretary of State for the Provinces.

The Honourable W. P. Howland, C. B.,
Lieutenant-Governor, Toronto.

Act of Parliament of Canada re-adjusting amounts payable in respect of debts of Provinces.

On 23rd May, 1873, the following Act was passed by the Parliament of Canada :—

An Act to re-adjust the amounts payable to and chargeable against the several Provinces of Canada by the Dominion Government so far as they depend on the debt with which they respectively entered the Union.

Whereas by the provisions of the *British North America Act*, 1867, and by the terms and conditions under which the Provinces of British Columbia and Manitoba were admitted into the Dominion, Canada became liable for the debts and liabilities of each Province, existing at the time of its becoming part of the Dominion, subject to the provision that each Province should, in account with Canada, be charged with interest at the rate of five per cent. per annum on the amount by which its said debts and liabilities exceeded, or should receive interest at the same rate by half-yearly payments in advance, on the amount by which its said debts and liabilities fell short of, certain fixed amounts :

And whereas the amount fixed as aforesaid in the case of the Provinces of Ontario and Quebec, conjointly (as having theretofore formed the Province of Canada), was sixty-two million five hundred thousand dollars ($62,500,000), and the debt of the said late Province, as now ascertained, exceeded the said sum by ten million five hundred and six thousand and eighty-eight dollars and eighty-four cents ($10,506,088.84) for the interest as aforesaid on which the said two Provinces were chargeable in account with Canada :

And whereas it is expedient to relieve the said Provinces of Ontario and Quebec from the said charge, and for that purpose hereafter to consider the fixed amount in their case as increased by the said sum of ten million five hundred and six thousand and eighty-eight dollars and eighty-four cents ; and to compensate the other Provinces for this addition to the general debt of Canada : Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :

1. In the accounts between the several Provinces of Canada and the Dominion, the amounts payable to, and chargeable against, the said Provinces respectively, in so far as they depend on the amount of debt with which each Province entered the Union, shall be calculated and allowed as if the sum fixed by the one hundred and twelfth section of the *British North America Act*, 1867, were increased from sixty-two millions five hundred thousand dollars, to the sum of seventy-three millions six thousand and eighty-eight dollars and eighty-four cents, and as if the amounts fixed as aforesaid, as respects the Provinces of Nova Scotia and New Brunswick by *The British North America Act*, 1867, and as respects the Provinces of British Columbia and Manitoba by the terms and conditions on which they were admitted into the Dominion, were increased in the same proportion.

2. The subsidies to the several Provinces, in July, one thousand eight hundred and seventy-three, shall be paid in accordance with the foregoing provisions of this Act.

3. All sums payable under this Act shall be a charge upon and payable out of the Consolidated Revenue Fund of Canada, and accounted for in like manner as other moneys payable for like purposes out of the same.

The questions for the Judicial Committee of the Privy Council are as follows :—

1. Whether under the circumstances herein before stated, the said John Hamilton Gray had become disqualified to act, or continue acting, as Arbitrator.

2. Whether, after a hearing before the three Arbitrators, two of them could legally render a decision or award; and if yea, could they do so in the absence of the third.

3. Whether, after the subsequent *ex parte* hearing before two Arbitrators in the absence of the third, these two could legally render a decision.

4. Whether the arbitrator appointed by Quebec had the right to resign ; whether the Government of Quebec had the right to accept his resignation and to revoke his appointment ; and whether such resignation or revocation was effectual and valid.

5. Whether, after one of the Arbitrators had so resigned his office, and his resignation had been so accepted, and his authority had been so revoked, the remaining two could legally proceed to hear the case, and to make a final award.

6. And whether the award of the 3rd of September, 1870, by the said Honourable David Lewis Macpherson and John Hamilton Gray is valid (save as affected by the Dominion Act above set forth), or is null and void.

O. MOWAT, *for Ontario.*
C. B. DE BOUCHERVILLE, *for Quebec.*